

THE MEASURE *of* WOMAN

Law and Female Identity in the Crown of Aragon

Marie A. Kelleher



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The Measure of Woman

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Law and Female Identity in the Crown of Aragon

Marie A. Kelleher

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To Jim Brundage
For patience, wisdom, and generosity
above and beyond the call of duty

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A Note on Names

The cases in this book are drawn from the records of a composite monarchy in which the inhabitants, in the Middle Ages as today, spoke and wrote in more than one language. I have done my best to consistently render names from the kingdom of Aragon in Castilian, and those from the Catalan counties and the kingdom of Valencia in Catalan. Monarchs referenced in the text are named and numbered according to the Catalan sequence:

Pere I	1196–1213
Jaume I	1213–1276
Pere II	1276–1285
Alfons II	1285–1291
Jaume II	1291–1327
Alfons III	1327–1336
Pere III	1336–1387



Peninsular territories of the Crown of Aragon, ca. 1291–1336.

Introduction

Legal Texts and Gendered Contexts

In twenty-first-century America, we have grown used to hearing that ours is a litigious society, to the point where it is easy to believe that our willingness to turn to the courts is without precedent. Historians of the premodern West, however, can point to other periods in which people regularly used formal litigation as a strategy not only to settle disputes but also to exact vengeance, to defame an enemy, or simply to make a statement. The later Middle Ages was one important chapter in this story: as medieval legal culture was transformed through the reintroduction and academic study of Roman and canon law, men and women proved eager to use that new law to construct and reconstruct social relationships.

For medieval women, however, choosing to litigate posed special problems, as this choice entailed accepting the analytical categories of a learned law that largely identified women in terms of their relationship to a given man. This book examines the relationship between women and law in later medieval Spain, specifically in the composite monarchy known as the Crown of Aragon, exploring the ways that law categorized and defined women during the late thirteenth and early fourteenth centuries, a period of intense jurisprudential activity in the Mediterranean. By examining unedited court records and locating them within the context of both prescriptive law codes and community expectations, I argue that women actively participated in the formation of the legal culture that sketched out the boundaries of their lives. The early fourteenth century represented a critical moment in the formation of legal ideas about women that would shape women's lives for centuries to come. During this time, we can catch glimpses of the battle over women's identity: the law did not precisely mirror women's lives, but it did provide a vocabulary through

which they attempted to define themselves in a world that was becoming increasingly legalized.

While this book tells the story of women in one particular part of western medieval Europe, it is in a sense two books in one. The first of these is an attempt to sketch out the lived experience of women in one part of medieval Spain, to bring the story of Iberian women into the larger conversations about medieval women in general, rather than viewing them as exceptional, and thus irrelevant to the broader narrative of women in the Middle Ages. The second is an argument about the nature of the relationship between women, gender, and legal culture. The way these women told their stories in court (either by themselves or through their legal representatives) and the way other people told stories about them reveals more than merely how women fit into their communities and the extent to which their experience adhered to gendered cultural norms enshrined in law. The process of litigation itself reveals women's active participation in the assimilation of a gender system encoded in a centuries-old law that was coming into new prominence across the European continent during the later Middle Ages. In order to be effective litigators, women had to represent themselves in ways that fit within the boundaries of gender as imagined in the legal sources. But by so doing, they helped to reify the gender assumptions that underpinned the substantive law, even if the details of these women's own stories belied those very assumptions.

Turning first to the question of medieval Iberian women in general, probably the most important English-language book on this subject to date is Heath Dillard's *Daughters of the Reconquest*. Writing over twenty-five years ago, Dillard noted that the scholarly treatments of the Christian reconquest of the Iberian peninsula had ignored the contributions of women. Working with the law codes of Castile during the high medieval period of Christian settlement, Dillard sketched out a picture of women's lives, read explicitly in a frontier context, arguing that women were vital in the Christian resettlement efforts and that their presence was essential in turning frontier garrisons into thriving Christian towns.¹

The writing and publication of Dillard's book should be read in the context of two scholarly trends at the time: a growing interest in women among medievalists in Spain, led by scholars like Teresa Maria Vinyoles i Vidal and Cristina Segura Graíño, and new research from Anglo-American scholars on the lives of ordinary women in premodern societies, spearheaded by scholars working in English and Italian archives. Interest in medieval Spanish women continued to develop in the peninsula during the 1980s and 1990s, becoming

ever more informed by feminist theory and praxis, resulting in a body of scholarship that examined particular forms of women's culture in the Middle Ages. Within the Anglo-American scholarly community, however, interest in medieval Iberia came to focus largely on that which makes Iberia nearly unique in the medieval West: the often uneasy coexistence of Christians, Jews, and Muslims in the peninsular lands, whether under Christian or Islamic rule. This wave of scholarly interest in the cultural pluralism and hybridity of medieval Iberia has not only offered new perspectives on a particular geographic area long considered marginal but has encouraged a reconsideration of how we define the geographic, cultural, and conceptual boundaries of medieval Europe itself. But the dominance of this vital subfield had the unfortunate side effect of pushing Iberian women's history into the background in the English-language scholarly community, even at a time when publications, conferences, and symposia in the fields of women's and gender history in the English-speaking world were especially strong.²

The past few years, however, have seen a renewed interest among Anglophone scholars in the history of Iberian women. This is especially evident among scholars of the early modern era, who are developing increasingly rich portraits of Iberian women of this period by reading against the grain in the rich archives of the Inquisition, as well as by exploring the more familiar municipal, notarial, and guild archives to uncover the lives of both ordinary and extraordinary women.³ While the documentary record for the Middle Ages is not as rich, scholars in the English-speaking world have begun to return to the study of medieval Iberian women, both noble and more ordinary.⁴ This book attempts to contribute to a general understanding of women in one region of medieval Europe: both what made them unique and how they fit into the larger story of women in broader context, whether of the medieval Mediterranean, or of the medieval West in general.

But this book is more than just a portrait of one particular group of women; it is also the story of the encounter between medieval women and a revolution in legal culture that, among other things, provided a more precise conceptual vocabulary with which to talk about gender. The following pages are a history of medieval Spanish women read through the lens of what was arguably the most important development in legal culture during the entire medieval period: the recovery of Roman law, combined with the rationalized study of canon law, and the diffusion of the ideals of these two bodies of law—together known as the *ius commune*—throughout western Europe. This was a period of intense jurisprudential activity not only in the Crown of Aragon

but also throughout the medieval West. Territorial sovereigns, especially kings, sought to bolster claims to centralized authority by sponsoring the creation of law codes grounded in the principles of the recently “rediscovered” law of the Roman Empire, replacing older sets of customs and privileges that had been designed with a much more localized authority in mind.⁵ These developments as they appeared in the Crown of Aragon will be treated in the first half of Chapter 1, but it is appropriate here to note that the same ideas were spreading throughout the European continent, resulting in ideas about gender that bore some striking similarities throughout that territory. In the Crown of Aragon’s neighbor Castile, Roman law was at the heart of the great law code of the Castilian Middle Ages, King Alfonso X’s thirteenth-century *Siete partidas*.⁶ Alfonso, like many rulers of his day, embraced the *ius commune* for its centralizing assumptions about the nature of political authority, rather than for what it had to say about gender. But those gender ideas were woven into the fabric of the imported law and, from there, made their way into the legal culture of places like Castile. The *Partidas*, like the Roman law upon which they were based, outlined situations in which women acted as independent or semi-independent legal agents as a matter of course. Women were not expected to be in court as often as their male counterparts, but they seem to have been a frequent enough presence to require that the law address their legal role in detail. Still, a Castilian woman’s greatest potential sphere of legal activity was in relation to her immediate family members and family property. In general, the *Partidas* treat women as a class as vulnerable and in need of protection—a reflection of Roman jurists’ vision of women as permanent minors.⁷

Women’s legal status in the Italian cities at the heart of the Roman law revival was in many ways similar to that of Castilian women: municipal statutes regarded women in general as physically and morally weak and in need of protection from themselves as well as from others.⁸ But as in Castile, the frequent presence of these “vulnerable” women in court demonstrates important differences between the legal rhetoric of female incapacity and women’s actual legal standing, especially with regard to property.⁹ We should also note that, unless otherwise specified, laws addressed to “men” generically were understood to apply to both sexes.¹⁰ This latter consideration should suggest not an effacement of the female but rather an indication that jurists trained in the *ius commune* understood that women had legal interests—and legal personalities—distinct from those of the men in their lives.

This apparent contradiction between assumptions about women’s fundamental vulnerability or incapacity as legal actors on the one hand and the

provisions in law for them to *be* legal actors on the other may have been the result of competing legal systems in the northern Italian cities, where Roman law at times proved less restrictive to women's legal agency than was older customary law (in this case, Lombard law and its idea of *mundium*, or the male head of household's near-absolute rule over the women in his household). Thus, the later medieval Italian cities were the scene of a collision between Roman law ideas of female incapacity, which restricted (though did not eliminate) a woman's public activities while maintaining her essential legal personhood, and the municipal statutes, shaped as they were by the interests of the urban patriciate, which tended to focus not so much on female incapacity or vulnerability as female absorption into the patriarchal *casa*, with all the restriction of legal personhood that entailed.¹¹

The situation of medieval Italian women with regard to the law illustrates how individual actors within a given legal system might exercise choices about which part of the legal framework available to them made the most sense in a given situation. Further north, in France and the Low Countries, the most important competition between legal systems (and the gendered logics they encapsulated) was the rough division between customary law in the North and traditions closer to Roman law in the south. The gendered rhetoric of both legal cultures generally presented women as inferior to men, though the customary law of the north (like the Lombard law of northern Italy) tended to place greater restrictions on women's legal personhood than did the Roman legal traditions of the South. By the end of the Middle Ages, Roman law had effectively penetrated the legal systems of the North, and historians of early modern France have noted that while jurists echoed Roman-law rhetoric in their tendency to cite women's weak and frivolous nature, those same women continued to exercise important control over property and rights of guardianship, especially as widows or even never-married women. The root of a married women's real (as opposed to theoretical) incapacity lay less in the fact of her biological sex than in her married state and the assumption that she was therefore a subordinate member of a household with a single unambiguous—and usually male—head. But these legal ideas about the relative capacities of married women drew their strength from the individual women, men, and families shaping choices *within* the framework of the law.¹² A similar situation existed in the Low Countries in the later Middle Ages, when members of middling households had the opportunity to choose between one marital property regime based in customary law that emphasized the household as a unit, and another based in Roman law that was contractual and assumed a separation of

marital goods. In both regions, as in the Italian cities, litigants and judges had at least two gendered logics to choose from and, as Martha Howell has noted in her study of later medieval Douai, the way that they went about making these choices shows us that gender “is not solely the product of a particular legal discourse but of multiple and competing discourses, and it thus cannot be reduced to the personal attributes necessary to a single role defined by law.”¹³

This brief overview of the law of the Crown of Aragon’s neighbors demonstrates that, during a period of legal transition such as the later Middle Ages, the relationship between law and its consumers was not a one-way street, as choices made in the process of litigation actively involved medieval people in the shaping of legal culture. Thus, we cannot credit or blame any new legal system, even one as pervasive as the *ius commune*, for the later medieval gender system: presented with options of legal systems and gender conceptions, jurists, legislators, and litigants would choose the one that best embodied the “social logic” of their time, place, and particular circumstance.¹⁴ However, given the frequency with which late medieval legislators, legal professionals, and even laypeople echoed the gender ideas of Roman and canon law in actual litigation, it would be foolish to discount the influence of this new set of legal developments.

Accordingly, the argument in the following chapters draws primarily on two types of sources: law codes, which told people how to behave, and legal case records, which show us how people represented their behavior to others. In the first category, I depend largely on the secular law codes developed and promulgated in the Crown of Aragon during the twelfth and thirteenth centuries. In the century and a half after the unification of the kingdom of Aragon and the counties of Catalonia in 1137, Roman-influenced law codes appeared in Teruel (1176), Lleida (1228), Valencia (1238), Aragon (1247), and Tortosa (1273), among others.¹⁵ But codes such as these were not the only sources of law in the Crown of Aragon. By the thirteenth century, the Catalano-Aragonese jurists commissioned to draw up these codes and the judges making rulings based on them would have had formal training in one of the legal faculties of one of the nascent universities, most likely Bologna, Montpellier, or (after 1300) Lleida.¹⁶ As I discuss in Chapter 1, this training would have consisted of a combination of Roman law (the Justinianic *Corpus iuris civilis*) and canon law (the *Corpus iuris canonici*), collectively known as the *ius commune*. Thus, to understand the legal culture of the later medieval Crown of Aragon, we must look not only to the branches of the regional law codes but also to the vast culture of the *ius commune* that formed their roots.

Taken together, these two types of legal sources—local or regional codes and *ius commune*—provide us with a rough picture of the assumptions (including gender assumptions) that legal professionals brought to the table when they made rulings in individual cases. The prescriptive sources are, however, only one part of the larger legal culture. The argument of this book rests on the vital interaction between the gender assumptions encoded in the law and those of ordinary people as revealed in records of actual legal cases. Several dozen of these cases are drawn from regional archives of royal judicial officials and municipal governments. But the most important source for secular case material, especially for the period before the Black Death, are the vast collections of the Archive of the Crown of Aragon, located in Barcelona. This archive's *processos en foli* and *processos en quart* sections contain numerous records of civil prosecutions and criminal inquests, many running to several dozen double-sided pages or more. I have used these wherever possible, but relatively few of these *processos* date from the early fourteenth century, and even fewer of these record disputes in which a woman was one of the primary litigants. On the other hand, the Chancery section of this same archive preserves a rich source for this earlier period: hundreds of bound registers (each comprising hundreds of double-sided folio pages) of royal correspondence on matters administrative, fiscal, and judicial, written from the king or the *infante* (prince) to a local official regarding a specific issue.¹⁷ Some of these letters are rescripts—that is, responses to a legal query that no longer survives. Others were correspondence initiated by the king or *infante* himself in response to a complaint from a third party. In all cases, the letters contained in these registers are brief, usually ranging from one-half to one-and-a-half folio pages. Among the correspondence relating to judicial matters, there are a few royal pardons for persons convicted in lower courts or safe-conducts for persons accused or convicted of noncapital offenses, but most common are royal orders directing a royal judicial official at the local level to investigate a particular accusation or punish a particular offense. These orders were sometimes prompted by a personal appeal from a defendant or his or her legal representative, or they might have originated in the royal courts themselves, as *ex officio* prosecutions, sparked by a general rumor of a crime or civil offense.

I have selected the particular cases that appear in this book because they involve women in some significant way, usually either as plaintiffs or defendants but sometimes as witnesses whose testimony touches on matters of gender. The following pages show the extraordinary breadth of the matters dealt with in these records and can only hint at how rich a source they constitute

for future studies of the daily lives of women and men in the medieval Crown of Aragon. But the nature of these sources means that there is also a great deal left out. First, only in rare instances can we pinpoint the social standing of the women involved. The occasional document might refer to a woman's membership, either by blood or by marriage, in a local aristocratic family; even more infrequently, the documents refer to her occupation, usually as a member of some craft trade. But the vast majority of these documents identify women only in relational terms, as wife, daughter, or widow of a given man. Except in the few cases where the document mentions something about that man's occupation—usually an artisan or craftsman, but sometimes also a local bureaucrat or a member of the minor local aristocracy or military elite—we can infer very little about the socioeconomic standing of the woman herself. The best we can do is to chart a broad swath, based on the nature of the evidence. Most of the cases discussed in this book have at their core a property dispute, even if the matters we are interested in are the marital violence that caused a woman to sue her husband for separation of goods or the sexual transgressions that caused a widow to forfeit her claim to administer the conjugal estate after her husband's death. This means that most of the women represented in these records were wealthy enough to possess some property (even if only a small city home or country farmstead, or a set of movable goods) over which to litigate, but not of sufficient standing to have claim to a title, either their own or their husband's. In other words, unless noted, most of the women whose stories appear in the following pages are neither members of the urban and rural aristocratic families that dominate the pages of the chronicles¹⁸ nor the desperately poor who are visible usually only in records of pious charities and prosecutions of petty theft.¹⁹ They are, rather, women belonging to the broad and varied middle of Catalano-Aragonese society.

Also largely absent from this study are women belonging to two other important groups of laywomen: the female members of the substantial Muslim and Jewish communities that made the Crown of Aragon nearly unique among kingdoms in the medieval West. These women, while they sometimes lived and worked in close proximity to their Christian sisters, had their own distinct historical experience. Some of this experience is documented in the state archives of the Crown of Aragon, and scholars have begun to explore it, asking thought-provoking questions that rightly cause us to reexamine what we mean by the category of "medieval women."²⁰ But the argument in this book focuses on the interaction between women and a particular body of law, one to which Muslim and Jewish women were only peripherally subject. Thus,

the story of women here is primarily the story of Christian women, operating in a legal context with which most Jewish and Muslim women would directly interact only on rare occasions.

Finally, because most of the surviving records are short notices rather than full trial transcripts, they contain only the basic facts, few details, and no verdicts. Such terse records present serious challenges to the researcher determined to coax a historical narrative out of them. While it is tempting to discuss the incidents reported in these records as fact, we need to remain aware that we rarely have more than accusations, which do not always correspond to an objective truth that may not be recoverable. In these circumstances, letting the record speak for itself is not an option.

This situation presents a particular problem for historians of medieval women, for whom legal sources, whether prescriptive or descriptive, have always been the most fruitful source of information about women's experience. Historians' approaches to this meeting between women and law have, we should note, gone through significant transformations over the past half-century or so. Early examinations of women and law largely depended on prescriptive sources like law codes, which tend to paint a picture of women as dependent and largely powerless. Taking these sources at face value led to a historical vision that emphasized law as a force oppressing women, one that constrained their activities and limited their lives. As recently as 1983, Cristina Segura Graíño could argue in her introduction to a collection of essays on medieval Iberian women and law that "women had to submit to men and did not fully enjoy their rights; only men enjoyed the full privileges that the law provided for, which for women, were limited."²¹

Around the early 1980s, however, historians of medieval women were beginning to question the totality of the influence of written law. For example, at the same time that she was arguing that the law was a fundamentally limiting force for women, Segura Graíño opened the question of whether written law might not be sufficient as a source for understanding women's historical experience,²² and Heath Dillard, whose *Daughters of the Reconquest* relies almost exclusively on prescriptive sources, raised (though did not resolve) the methodological problem of potential discrepancies between law and practice.²³ In the subsequent decades, historians interested in law and gender turned to descriptive sources that, combined with nonlegal sources, focused on the gap between the gendered ideals expounded in the law codes on the one hand and the lived experience of women as represented in litigation on the other, tending to show women either subverting the law or using it to their own advantage.²⁴

Even more recently, historians interested in law and legal processes have been raising important questions about the way law works, as both text and context, and have argued that the nature of law itself helps to shape human relationships. Daniel Lord Smail, for example, has argued for medieval Marseille that the act of choosing litigation was a form of status negotiation and communication.²⁵ Carol Lansing has reached similar conclusions in her investigations of women's identity in medieval Bologna, showing female litigants and witnesses using the legal system to communicate something about their status that did not fit within the categories developed by the learned law.²⁶ The work of these two historians, among others, represents a new approach to the relationship between individuals and the law, and signals new ways to use legal sources to understand the historical experience of women.

We should not, however, approach even the most descriptive (as opposed to prescriptive) legal sources as a mirror held up to women's lives. Legal sources are more than just a set of source materials; they are materials shaped by a very particular context, and an understanding of that context is essential to how we read the documents and the conclusions that we draw from them. It bears noting that even witness depositions, often the closest we get to defendants' experience in their own words, are actually responses to specific questions posed by court personnel, questions that were based on a clerical/legal elite's understanding of what was relevant and what was not.²⁷ In short, the legal record is as much an act of forgetting as it is one of remembering,²⁸ and when women are involved, we should assume that legal professionals' understanding of gender would have shaped their line of questioning and the portions of the answers that they felt were worth recording.

The idea of litigation as a conscious act of narrative construction is not new. Over twenty years ago, Natalie Zemon Davis's *Fiction in the Archives* detailed the way that litigants in early modern France constructed their pardon appeals, arguing that these "fictions" reveal a certain kind of truth, even if their precise factual content is open to debate. Although the defendant was the primary author of these fictions, that defendant had to draw on his or her experience of storytelling and rough understanding of what might be considered exculpating circumstances. He or she worked as part of a team that included notaries and lawyers who would help the primary author frame the story in a way that was most likely to make his or her case.²⁹ The collaborative nature of narrative construction within legal sources is thus a second point that must be borne in mind when attempting to use these sources to understand women's historical experience. Self-representations that appear to be women's own are

in fact only partly so: if women (and men as well, for that matter) wanted to be successful in the judicial arena, they had to present both their cases and themselves in terms that were both legally and culturally comprehensible.³⁰

For women in the Middle Ages, this meeting of legal and cultural expectations required them to present themselves as they fit into three overlapping matrices of identity that run through most, if not all, prescriptive sources of that era. The first of these was a set of legal assumptions about the essential nature of women in general. Lawmakers, judges, and lawyers in the later medieval Crown of Aragon were trained in a legal system that emphasized women's essential incapacity in matters involving the public sphere, an incapacity that made them deserving of special legal protections but also subjected them to special restrictions. The second factor in women's legal identity was their relation to a given man. A woman might be identified as daughter, wife, or widow of so-and-so, a relationship that would entail a certain set of cultural expectations: women's relationships to fathers, husbands (living or dead), and other male authority figures governed their ability to exercise autonomous authority, their control over property, their sexuality, and how violence against them would be measured. The practical effect of these relationships could further differ in both content and degree of intensity depending on a woman's socioeconomic station. To put it another way, in spite of lawmakers' many stated and tacit assumptions about the relative capacities and failings of the female sex in general, there was not a single relationship between women and law because the law did not always treat "woman" as a unitary category. Finally, women of all estates and life stages were subject to a third set of legal identities, that of their respectability or reputation, a measure of how well they adhered to the expectations about women in general, as well as about women within any relational subcategory. Reputation could be proven or damaged in a number of ways; for example, recent scholarly investigations of women's speech, especially the phenomenon of scolding, have shown how "sins of the tongue" could undermine a woman's reputation.³¹ The most obvious proving ground of female reputation, however, was a woman's sexual behavior: although extramarital sex was not uncommon in the later Middle Ages, marriage was the only approved venue for sexual activity, and extramarital sex, even when not a prosecutable offense in and of itself, could undermine a woman's reputation. As Chapters 3 and 4 will discuss, loss of reputation carried with it serious legal consequences, not least among them the forfeiture of the full protection of law.

Self-representation was thus a high-stakes game for medieval women.

Legal records offer traces of how individual women negotiated these overlapping identities to assert their own stories. But the process of litigation, that act of storytelling, did not take place within a vacuum. Rather it had to be positioned strategically against the competing narratives of both the opposing party and the culture as a whole. For a legal narrative to function, it had to be plausible to both court and community, which meant that the characters and their actions could not radically deviate from cultural expectations without risking the sympathies of their audience. The implications for the study of women and law are important: if a story has to function in the parallel cultures of both community and courtroom, we cannot assume that legal ideas about gender in the prescriptive sources were something to be “gotten around” for medieval women. Quite the contrary: those ideas had to be used.³² Legal case documents are the footprints of that use and should be read as such.

Thus, although legal sources might tell us only a little more of “what really happened” than would an Icelandic saga or a saint’s *vita*, they, like those other sources, provide us with some important truths about the culture that produced them. One of the underlying assumptions that runs throughout this book is that these general principles are especially applicable to ideas about gender—a persistent and resilient package of culturally constructed assumptions, the performance of which we may glimpse in the construction of legal narratives.

Accordingly, this book opens by examining the problem of the nature of legal discourse, asking how it was formed, who took part in its formation, and what was at stake for women. The first chapter begins by introducing the legal system in the later medieval Crown of Aragon, devoting special attention to the role of the *ius commune* in the development and practice of local law and the way that these legal developments shaped the medieval gender system. An examination of matters of gender in both the law codes of the Crown of Aragon and the principles of Roman and canon law that would have influenced legislators, judges, and other courtroom personnel reveals what seems to be a fairly solid set of assumptions about women in general, most notably that they were naturally weak, vulnerable, and modest. The second half of this chapter then moves from the realm of substantive law to consider procedural law, arguing that the representations of gender in the prescriptive sources, while important, were negotiable through the process of litigation. A brief discussion of the Romano-canonical procedure used in the courts of the Crown of Aragon in the later Middle Ages illustrates the legal mechanisms by which women and their families, friends, enemies, and neighbors were an essential part of the larger legal culture that shaped women’s identities in the later Middle Ages.

The remaining chapters examine the ideas surrounding women in relation to specific categories of legal problem. While maintaining awareness of the legal assumptions about women discussed in Chapter 1, these chapters juxtapose the experience of women from different relational categories, looking for threads that run through the overall legal ideas about women, for both common ground and fault lines. Chapter 2 investigates how the gendered power relationships implicit in the *ius commune* and the Catalano-Aragonese legal culture it influenced affected women's control of property, and how women constructed legal narratives about themselves to secure control over their own economic resources. A side-by-side analysis of the legal strategies of married women and widows reveals a paradox in women's property litigation that may stand for a part of women's relationship to the law in general: for an individual woman to assert her rights to manage her own property in a way that ran counter to the gender assumptions of written law, a woman had to employ the conceptual language of the legal category in which the law had placed her. Thus, women's own litigation subtly reinforced a gender system that may have had little to do with the actual experience of these same female litigants.

While the litigation in Chapter 2 concentrates on women working within the relational categories set out for them in law, Chapter 3 examines legal cases involving women's illicit sexual activity to show how the boundaries between those categories overlapped with another matrix of female identity: that of respectability, which for women was largely (though not wholly) contingent on their sexual behavior. Whether unmarried, married, or widowed, all women could be legally divided by the binary of reputation, *bona fama* versus *mala fama*. The actual offenses of which these women stood accused differed according to relational category: fornication or prostitution for unmarried or widowed women and adultery for married women (and sometimes for widows as well). Yet the effect was similar in that women, regardless of relational category, were grouped together by legal assumptions about what was appropriate sexual behavior for women in general, and transgressing those boundaries could result in a forfeiture of some or all of their legal rights.

Chapter 4 builds on these issues of reputation and legal personality to assess how shifts in category could affect women's litigation in cases of violence, questioning what the legal culture at all levels considered a "reasonable" expectation of violence between men and women. An examination of the issues of spousal abuse, rape, and uxoricide builds on the tension between category and slippage between categories that has been built up over the preceding chapters. While the law afforded women protections against violence, female

litigants had to structure their legal arguments in such a way as to prove they were respectable enough to merit these protections. By so doing, they helped to solidify gendered legal assumptions about deserving versus undeserving women.

My overall approach in these pages is to treat the law as an ongoing dialogue about the legal nature of women, rather than merely a means by which gender ideologies might be imposed, reinforced, or subverted. Although written law necessarily forms a part of any literate society's legal culture, it is only one variable among many. Legal ideas about women took shape in the courts, where lawyers and judges interpreted written law according to the exigencies of each particular case. But they also were formed at the level of local communities, where litigants, their families, and their neighbors interpreted the standards set out for various groups of women as they understood them and applied them to the individual women they encountered on a daily basis. This legal discourse of gender, at all levels, played an important role in constructing boundaries between the categories that applied to women. Furthermore, this study of women in the Crown of Aragon reveals areas of overlap and ambiguity in legal categories for women and suggests that these gray areas were the most dynamic parts of the legal discourse surrounding women, functioning as spaces in which the status of individual women could be negotiated, though within limits.

Chapter 1

Drawing Boundaries: Women in the Legal Landscape in the Age of Jaume II

In September 1303, Ermessenda de Cabrenys, a member of the minor nobility in the region around the northern Catalan city of Girona, was called to appear before the *veguer* and his official judge to answer charges against her. The documents do not specify the exact nature of her offense, except to say that she had violated the statutes of the Peace and Truce, but it likely involved one or more of the substantial debts that she had accumulated. An agreement for one of these, dated December 29, 1299, and bound together with the charges of the Peace and Truce violations, showed that she had convinced Bernat de Petra and Jaume de Bertilio, partners in a Girona cloth mercantile, to extend her credit in the substantial sum of 759 sous for unspecified fabric for her own use and that of her household. In exchange for this credit, she offered up eighteen “hostages”—that is, people to stand surety for her should she default. Finally, she stipulated that she would not ask for any extensions on the debt, nor would she leave the district of Girona until the debt was paid.¹

This final provision was the subject of the 1303 hearing that brought Ermessenda’s case into the registers of the chancery of the Crown of Aragon. At that time, it was not Ermessenda de Cabrenys who appeared in the *veguer*’s court but Berenguer de Devesia, a trained lawyer acting as her procurator and official legal representative. Reaching back to provisions contained in the sixth-century Code of Justinian, Berenguer argued that because his client was a *materfamilias*—a term of ancient Roman origin that comprehended both sex and status but not motherhood per se²—it was inappropriate for the *veguer* to compel her to mix with “crowds of men” at the law courts. She was, according

to her procurator, prepared to pay the fine or fee (*pignora*) demanded by the *veguer*, but would only do so in person at her primary residence in Cartells, or in the town of Santa Eugenia—significantly, both places under her direct jurisdiction, rather than that of the *veguer*. If the *veguer* wanted the *pignora* paid in the city of Girona itself, she had authorized her procurator to do so in her name but refused to appear personally in court, as to do so would be an affront to her status as a *materfamilias*.³ Berenguer went on to cite another passage from Roman law, this time from the fifth-century Theodosian Code, to support his position,⁴ and even offered to pay the expenses of the officials who might be sent to collect the debt. His stated concern was not the payment itself but the impropriety of his client's being forced to leave her own home to answer a charge in public.⁵

People in modern Western societies have become used to thinking about the law as something that sets limits to protect individuals and groups from harm and that offers redress when harm occurs. But as the story of Ermessenda de Cabrenys illustrates, the boundaries for acceptable behavior that law and legal systems lay down shape not only an individual's day-to-day behavior but also his or her sense of where he or she fits into the particular culture that he or she is a part of. Laws can reflect a society's real standards for behavior, or they may express a cultural ideal, but either way, the subtle cultural framework that they construct may be as influential—if not more so—than the more obvious restrictions on an individual's behavior.

Gender systems are one of the more pervasive frameworks that the law has had a hand in constructing. Nevertheless, though gender is intertwined with legal culture, the relationship between the two is mutable, either as a product of a given society's internal legal developments or as a response to external challenges. In order to understand the way that the law and gender interact, though, it is not sufficient to look merely at any society's legal system in isolation. Laws and legal systems are not born *ex nihilo*, but rather are the product of sometimes centuries of legal development, often incorporating elements of numerous older systems. The law and legal culture of the later medieval Crown of Aragon are good examples of this tendency. Secular law borrowed from Germanic, Roman, and ecclesiastical legal traditions and assimilated portions of the value systems—including ideas about gender—that shaped those legal cultures.

The fact that the Crown of Aragon was a federated monarchy, composed of several smaller territorial units, each with its own law, presents both challenges and opportunities for historians interested in the formation of women's

legal identity. The multiple and often overlapping jurisdictions and legal systems of the Crown of Aragon, while complex, also allow us to make some more generalized statements about women's legal identity that a geographic territory with a more unified system might not. The first half of this chapter outlines the legal landscape in the kingdoms of the Crown of Aragon, focusing on how the medieval reception of the Roman and canon law of the *ius commune* added a unifying element to a disparate legal landscape, in the process contributing to the construction of a multilayered legal identity for women. It would, however, be a mistake to grant sole agency to a depersonalized legal movement. Law only works in conjunction with the individuals and societies who adopt, interpret, and use it. Accordingly, the second half of this chapter moves from the realm of substantive law to consider procedural law, arguing that the gender system laid out in the formal legal framework, while important, was also negotiable, and illustrating the legal mechanisms by which women and their families, friends, enemies, and neighbors could interact with and influence the legal discourse that shaped women's lives in the later Middle Ages.

The Legal Landscape

The legal environment of the Crown of Aragon in the late thirteenth and early fourteenth centuries was the product not just of internal developments but also of important relations with its neighbors, beginning even before the twelfth-century dynastic union between the counts of Barcelona and the royal house of Aragon.⁶ The first, and arguably oldest, influence on the development of Catalano-Aragonese history was the relationship between the Catalan counties to the south of the Pyrenees and the Occitan counties to the north. The connection between these two regions originated with the Carolingian conquests of the late eighth and early ninth centuries⁷ and persisted long after the Catalan counts became independent rulers of their own territories in the tenth, sharing linguistic, legal, and institutional patterns that differed from the surrounding regions, and crafting marital alliances that maintained the political connection between the two.⁸ The importance of the link between these territories might be best exemplified by the reign of King Pere I (r. 1196–1213), whose political and marital alliances with Toulouse and Montpellier eventually led to his death in the Albigensian crusades at the battle of Muret (1213). According to Thomas Bisson, Pere's death marked the end of "Catalan dreams of . . . possibly uniting the people of Catalonia, Provence, and Languedoc."⁹

Less than fifty years later, Jaume I (r. 1213–76) had ceded to the French king Louis IX claim to all territory north of the Pyrenees, except the county of Rousillon and the lordship of Montpellier, both of which would eventually pass to the Catalan kings of Mallorca.¹⁰ By the beginning of the fourteenth century, the Crown's ties with the southern French principalities had not been extinguished—Jaume II (r. 1291–1327) would marry women of two different southern French aristocratic houses¹¹—but the trans-Pyrenean relationship in the later Middle Ages was no longer as important as it once had been. Nevertheless, the connections between the two regions persisted in the realm of intellectual developments, especially in the field of law, as the legal faculty of Montpellier brought scholars from the Crown of Aragon into close contact with their counterparts from the Midi.

At the same time that the Crown's territorial claims north of the Pyrenees were declining, political relations with the neighboring kingdom of Castile began to take on greater import. The two kingdoms had been sometime allies in the reconquest of the peninsula throughout the twelfth and thirteenth centuries, most notably in 1212 when Pere I, as an ally of the Castilian king Alfonso VIII, played an important role in defeating the Almohads at the pivotal battle of Las Navas de Tolosa.¹² But the ongoing reconquest of the peninsula also gave rise to rivalries between the two kingdoms: Jaume I's conquest of Valencia was to plunge him into conflict with Castile's Alfonso X, eventually leading him to give up the southern portions of that conquest to his Castilian neighbor. The decades covered in the present volume marked a brief period of peace between the two kingdoms, bookended by the struggle over southern Valencia in the late thirteenth century and war between Pere III and the kings of Castile from 1356 to 1375.¹³

Thus, the last decades of the thirteenth century and the first decades of the fourteenth were a period of stabilization of the peninsular borders of the Crown of Aragon and its relations with its immediate neighbors. During this time, the Catalano-Aragonese monarchs turned their attention to consolidating their authority over their own vassals and to expanding into another region that would become the defining context for the Crown during the later Middle Ages: the Mediterranean. One might well argue that the region that was to become the Crown of Aragon had faced the Mediterranean ever since Roman times, but the Mediterranean context began to take precedence over all others during the thirteenth and early fourteenth centuries. In the century or so between 1229 and 1324, the Catalano-Aragonese monarchs extended their domains into Mallorca, Sicily and southern Italy, and Sardinia.¹⁴ During

the early decades of this period of maritime expansion, the Crown of Aragon's growing influence in the Mediterranean caused no alarm among the other Christian political and mercantile powers, principally because Jaume I confined his actions to the western Mediterranean, expanding in what were seen as defensive actions against the Muslim powers off his coast. This equilibrium was ruptured, however, in 1282 with Jaume's son Pere II's intervention in Sicily in the wake of the anti-Angevin uprising known as the Sicilian Vespers. The aftermath of this incident saw a branch of the royal house of Barcelona installed as rulers of Sicily and southern Italy, and also brought Catalan merchants into the eastern Mediterranean in significant numbers for the first time, impinging on the Italian cities' monopoly on trade with the eastern Mediterranean and routes into central Asia.¹⁵ However, while the presence of Catalano-Aragonese merchants and mercenaries in the eastern Mediterranean troubled relations with some of the Crown's Italian neighbors, their establishment of important political and commercial footholds in the region intensified an already ongoing process of cultural interchange. As Catalano-Aragonese merchants increased their activity in an international trade that encompassed everything from grain to ostrich plumes to the human cargo of the slave market, the Crown of Aragon also participated in the Mediterranean exchange of ideas in the fields of architecture, painting, and humanist literature during the later Middle Ages.¹⁶

But even before this period of commercial and military-political expansion began, Catalan and Aragonese scholars had been taking part in an intellectual interchange that brought together students and scholars from across Europe: the development of a shared legal culture, based in the Mediterranean, first nurtured in the legal faculties of Bologna and Montpellier, quickly spreading north of the Alps and the Pyrenees to become the foundation of the legal culture of continental Europe as a whole. This shared legal movement—the *ius commune*—was to bring with it a set of gender ideas that would have serious implications for women in the Crown of Aragon, as well as in other locations throughout the Mediterranean and beyond. But it is important to note that the legal scholars who returned to the cities, towns, and courts of the Crown of Aragon with these new ideas did not simply begin applying the gendered precepts of Roman and canon law to the women they encountered in their courtrooms. Rather, the newly acquired legal education of the judge, lawyer, or notary in question was layered over extant laws that varied from one part of the Crown lands to the next. It is to a brief description of this multi-layered legal system that we turn first.

The Ius Commune in the Crown Territories

The legal history of the Crown territories, as elsewhere in Western Europe, underwent an important transition during the thirteenth century. As the Crown territories expanded during the high and later Middle Ages, monarchs of the Crown of Aragon worked to develop institutions that served their own interests, often in opposition to local magnates who at times banded together in *uniones* to uphold local custom against the encroachments of a new body of law that both undermined customary law and tended to support centralized legal authority.¹⁷ One important aid in the monarchs' project of centralization was the gradual incorporation of the principles of the *ius commune*, which would prove an important factor in the way that women's place in society was defined. The *ius commune* was a combination of Roman law and canon law, and its widespread influence on later medieval law was the product of the resurgence in formal education in Western Europe during the high and later Middle Ages.¹⁸ The Roman law of the *ius commune* was drawn from the Roman emperor Justinian's massive compilations of his own laws, together with those dating from the classical age of Roman jurisprudence in the second and third centuries C.E. These codes became the subject of renewed interest on the part of legal scholars in Pavia and Bologna, most notably Irnerius (fl. 1070–1100), who was the first in a long line of Bologna legal scholars to comment and expound upon the Justinianic corpus.¹⁹

Around the same time that Irnerius and his immediate successors were working on recovering and digesting Roman civil law, a twelfth-century monk known to history as Gratian embarked on his own effort to bring order to the chaos that marked ecclesiastical law before the twelfth century.²⁰ Sometime in the early 1140s, Gratian compiled his *Concordantia discordantium canonum*—more commonly known as the *Decretum*—in an attempt not only to bring together the numerous canons in a systematic collection but also to resolve the apparent conflicts that they presented. Over the course of the following century and a half, popes added rescripts addressing specific issues. These “decretals” were collected into volumes that, together with the *Decretum*, came to be known as the *Corpus iuris canonici* or “body of canon law.”²¹

The *Corpus iuris civilis* and the *Corpus iuris canonici*, commonly referred to together as the *ius commune*, comprised the two halves of the basic curriculum of the medieval law faculties. It is important to note that no secular court actually applied the *ius commune* directly; rather, the new law served as a conceptual framework for the creation and interpretation of secular codes – what

Peter Stein has called a “universal grammar of law.”²² In the Crown of Aragon, as in much of Europe, the incorporation of the legal principles of the *ius commune* reached its height during the twelfth and thirteenth centuries, when monarchs throughout Western Europe were drawing up law codes for their realms.²³ But the medieval Crown of Aragon was far from a blank slate when it came to Roman law, the groundwork having been laid during the early Middle Ages, when the peninsula was dominated by Visigothic law, which was heavily romanizing in both content and structure.²⁴ The persistence of Roman law within the Crown territories throughout the tenth and eleventh centuries became most evident when portions of Roman law were incorporated into the twelfth-century redaction of the *Usatges* of Barcelona, a compilation of “feudal” customs and usages to which the compilers not only added excerpts from the Visigothic *Liber iudiciorum* that it was meant to complement but also cited collections of or commentaries on Roman law, such as the sixth-century Romano-Visigothic Breviary of Alaric, the *Exceptiones Petri* (an Italian commentary on Roman law roughly contemporaneous with Irnerius), or even Justinian’s *Corpus iuris civilis* itself.²⁵

The continuing influence of Roman legal ideas throughout the early Middle Ages meant that, in Catalonia at least, the ideas of Roman law fell upon fertile soil. Of all the peninsular kingdoms that would form the nucleus of the Crown of Aragon, Catalonia experienced the earliest and most rapid incorporation of the *ius commune*, due in part to geographic proximity to and commercial ties with the Italian communes that were the crucible of the Roman law revival and to the proximity of Montpellier, an important early center of legal scholarship in the Midi. Judicial and notarial activity further increased the Roman flavor of law in the Crown of Aragon during the thirteenth century, by which time Roman law (either verbatim or paraphrased) was common in new legislation throughout the Crown territories, even in redactions of local customs;²⁶ by the fourteenth century, Catalano-Aragonese jurists increasingly invoked Roman law in their deliberations and verdicts.²⁷

The influence of the *ius commune* on the law of the Crown of Aragon was not limited to Catalonia. In the kingdom of Aragon, Roman legal ideas were incorporated into the legal culture of that kingdom more slowly than in other regions of the Crown.²⁸ Nevertheless, the *ius commune* had made its way into the legal culture of the kingdom of Aragon by the second half of the thirteenth century, culminating in Jaime I’s approval in 1247 of the bishop of Huesca Vidal de Cañellas’s systematic collection of customs, judicial rulings, and royal laws that came to serve as the definitive version of the *Fueros* of Aragon—a

collection that resembled Justinianic Roman law in both organization and content.²⁹

The thirteenth-century conquest of the territories that would become the kingdom of Valencia added yet another dimension to the legal landscape of the later medieval Crown of Aragon. The legal history of early postconquest Valencia at first echoed that of New Catalonia, as the exigencies of conquest and settlement required concessions of privileges to individual localities.³⁰ Much of this early law was based on foundation charters conceded by Jaume I, but the most common source of law in the very early settlement period was the *Fueros* of Aragon, brought by the Aragonese nobles who had been instrumental in the conquest and early settlement of the newly conquered territory.³¹ But the legal and political terrain shifted when Jaume I declared Valencia an autonomous kingdom and gradually imposed the laws of its royal capital—the 1240 *Furs de Valencia*—on the kingdom as a whole. These laws bore a much closer relationship to those of Catalonia than to the Aragonese *fueros* and, as such, were heavily influenced by the *ius commune*, incorporating adapted extracts from the Digest and the *Corpus iuris canonici*, and sometimes reproducing verbatim parts of Justinian's Code.³²

The legal diversity of the Crown of Aragon was further complicated by the Crown's numerous Jewish and Muslim communities that, at least theoretically, maintained a degree of judicial and political sovereignty, although royal protection came at the price of dependence on continued royal favor. As a rule, the Muslim and Jewish *aljamas* (the corporate entities that corresponded to these religious minority districts) and their officials adjudicated internal disputes according to their own law. Among the Crown's Jews, rabbinical authorities generally only permitted bringing internal affairs before the Christian courts when the fear of one of the parties threatened to subvert the judicial process within the *aljama*,³³ and Muslims in the Crown territories usually only ended up in Christian courts in cases of appeals, or when they were involved in a legal dispute that crossed confessional lines.³⁴ Christian authorities did intervene in both the financial and judicial affairs of these ostensibly autonomous communities, and the level of the *aljamas'* practical autonomy ebbed and flowed over the decades and centuries of the high and later Middle Ages.³⁵ Nonetheless, the fact that cases internal to the Islamic and Jewish population in the Crown of Aragon were theoretically the province of that *aljama's* own officials meant that, with the exception of cases involving female slaves or interconfessional sexuality, relatively few cases involving Muslim or Jewish women came before the royal courts.³⁶ On the other hand, we can assume

that those that did were in some way important to either the monarchs' maintenance of their own sovereignty or their conceptions of women's roles and therefore merit examination.

As the Catalano-Aragonese presence in the law faculties at Bologna and Montpellier increased during the thirteenth and fourteenth centuries and with the foundation of an indigenous *studium generale* in the Catalan town of Lleida in 1300,³⁷ the products of this education increasingly invoked Roman law in their deliberations, documents, and verdicts upon their return to the Crown of Aragon to serve as lawyers, jurists, and notaries.³⁸ But the growing influence of this "foreign" law did not pass without causing alarm in some quarters. Roman law was popular among the educated class of jurists but faced resistance from lay magnates who feared that it would erode traditional privileges linked to status and land tenure. Resistance was perhaps strongest in the kingdom of Aragon, where the nobles who had long had an uneasy relationship with the Barcelonan monarchs³⁹ saw the new law as a threat to their legal and territorial sovereignty and, in the thirteenth century, went so far as to lodge a formal complaint with King Jaume I about the preponderance of Romanists in his court who handed down rulings contrary to their own laws.⁴⁰

Possibly in response to his Aragonese magnates, or possibly merely as an affirmation of his own legal sovereignty, Jaume I himself twice (in 1243 and 1251⁴¹) prohibited the direct application of the *ius commune* in Crown courts.⁴² However, royal authorities seem to have enforced these edicts sporadically at best. In fact, many of the thirteenth-century codes specifically mention recourse to Roman law as a supplementary law when other legal traditions do not adequately treat a subject under analysis. In Catalonia, the *Costums* of Lleida, for example, included Roman law among the many laws that might be cited—admittedly, only after the *Costums* themselves, the royal privileges, the *Usatges* of Catalonia, and even Visigothic law. Likewise, the *Costums* of Tortosa proposed an order of citations that proceeded from *Costums* to royal *Constitucions* and then to the *ius commune*. And in the kingdom of Valencia in 1309, Jaume II issued an edict allowing the *justicia* to use the substantive law of the *ius commune* to resolve any legal issue not directly addressed in the *Furs*.⁴³ Additionally, jurists throughout the Crown of Aragon were permitted recourse to the principles of *aequitas* (that is, justice as perceived in human relations but not set down in the law of a given region) in their decisions—a provision that seem designed to allow these educated jurists to apply basic principles of the *ius commune* to their decisions.⁴⁴

Given these opportunities to use the principles of the law in which they

had been trained, legal professionals in the later medieval Crown of Aragon played an important role in the growth of the influence of the *ius commune*. By 1359, when Pere III (r. 1336–87) required advocates, judges, and assessors to be familiar with the law of either the *Corpus iuris civilis* or at least the *Corpus iuris canonici*,⁴⁵ the *ius commune* had permeated the juridical atmosphere of Catalonia, from custom and feudal law to royal decrees, with jurists even known to invoke the *ius commune* in preference to Catalan laws.⁴⁶ Even in the kingdom of Aragon, judges incorporated Roman law and legal principles in the *observancias* (thirteenth- and fourteenth-century Aragonese jurists' rulings and interpretations of the *Fueros*). These *observancias* gained authority by their continuous use and, once they had been written down during the second half of the thirteenth century, eventually equaled the *Fueros* themselves as a source of law.⁴⁷ Even the royal law of the *Constituciones* could be rendered invalid if it ran contrary to the *ius commune*, and the first compilation of the *Constituciones* followed the systematic order of Justinian's Code.⁴⁸

Gender and the Ius Commune

As both Roman and canon law made their way into the legal systems of the Crown of Aragon, the form and content of the gender assumptions that underpinned many of these laws were absorbed along with them, lending a specificity to the conceptual vocabulary that women had to use to define themselves when litigating. One area in particular where the influence of the Roman law was notable was in questions of women's legal agency and their perceived ability to handle their own affairs competently. Womanly weakness (*fragilitas*) and incapacity (*imbecilitas*) were two of the most commonly cited gender ideas in classical Roman law; these concepts encouraged the courts to treat women as permanent minors when it came to legal matters.⁴⁹ This characterization was not, however, absolute. The influential classical jurist Gaius (fl. 130–180) noted that the tutelage of adult women was, at his time, rationalized in terms of their "light-mindedness" (*animi levitatis*),⁵⁰ but he also argued against this apparently common idea, calling it "specious, rather than true."⁵¹ As the gradual diminution of the institution of guardianship for women in the late Republic and early Roman Empire had resulted in ever-increasing numbers of Roman women who were independent legal persons not under the tutelage of a *paterfamilias*, the idea of women's innate legal incapacity did not mesh well with the observable fact that women did handle their affairs competently.⁵² Suzanne Dixon has argued that guardianship of adult women was only ever about property transmission, and that late republican and early imperial ideas

about women's incapacity were the result of Roman jurists' efforts to explain a system of unknown origin. The only analogy available to them was the tutorship of minors, which was manifestly about legal incapacity.⁵³ Nevertheless, the fact that Gaius apparently argued against a perception common in his day suggests that, for legal writers, the matter of women's light-mindedness (which we might oppose to the Roman idea of *gravitas* or "weightiness" necessary to the public life of Roman men) was very much an open question.⁵⁴

While the question of a woman's relative capacity in legal matters remained open to debate, the idea of the inherently incapable woman constituted enough of a presence in Roman legal thought to combine powerfully with another Roman gender idea: natural female "modesty" or "shame" (*verecundia*). Judith Evans Grubbs has argued that this idea originated not in legal sources but in the broader Roman culture, and only later made its way into law.⁵⁵ Whatever the origin, by the second and third centuries century C.E.—that is, the "classical" period of Roman jurisprudence—the idea of female modesty had taken firm root in the legal literature. According to Ulpian (d. 228), another important classical jurist, women should not involve themselves in the lawsuits of others in a way that was "contrary to the modesty suitable for their sex, so that women not discharge men's duties."⁵⁶ A woman might act on her own behalf or on behalf of a minor, but it was up to the praetor to discern that she had not gone "beyond the modesty of her sex (*sexus verecundia*)" before he allowed her to lodge an accusation,⁵⁷ and restrictions on women's participation in court were couched in explicitly gendered terms, "so that women not rush irreverently into scorn of their matronly honor on the pretext of prosecuting a lawsuit, and so that they not be compelled to be present at the gatherings of men or at trials."⁵⁸

We are thus left with an ambiguity in Roman law's legacy to medieval women. On the one hand, classical jurists recognized that women of their day could and did act on their own in the public forum of the courts, that they could sue on their own behalf, and that they could answer charges lodged against them. On the other hand, powerful ideas about women's intellectual weaknesses and general vulnerability to male influence combined with cultural norms about appropriate female behavior to create a climate inimical to respectable women's participation in the public forum of the law courts.

Canon law added yet another dimension to the gender ideas that medieval judicial officials had to work with.⁵⁹ Some gender ideas in the *Corpus iuris canonici* overlap with those of the Romans. Take, for example, the idea of female *fragilitas* and *imbecilitas*. Gratian, while he does not use these precise

words, employs the same idea, declaring that “man (*vir*) is so-called not because of his sex but because of his virtue (*virtute*) of soul; woman (*mulier*) so-called not because of the sex of her body but because of her softness (*mollitie*) of mind.”⁶⁰ However, Gratian and other canonists were less concerned with any neo-Aristotelian ideas about women’s inborn qualities than with biblically founded ideas that reinforced a gender hierarchy that reflected a divine plan. According to Gratian, women’s connection to Eve’s original sin placed all women in a condition of servitude.⁶¹ This condition, however, is phrased less as a punishment than as the natural order of things: Gratian cites Paul’s analogy between man’s headship of woman and Christ’s headship of the church⁶² and shrugs off Old Testament examples of women in positions of public authority as irrelevant because the “old law” had been replaced by the *perfectione gratiae* brought about by Christ’s sacrifice, so that many old things no longer applied.⁶³ Although Gratian argued in at least one place for the complementarity of the sexes by asserting that “man is the head of woman; woman the body of man,”⁶⁴ his belief in the self-evident headship of male over female was further reinforced by the decretists who glossed his work: Johannes Teutonicus (ca. 1170–1245) noted that woman was created from man and should therefore be subject to him,⁶⁵ and Rolandus (fl. late 1150s) deemed women’s subordinate status to be “manifestly proved.”⁶⁶

The decretals contained similar assumptions about women’s basic nature. An example from the early thirteenth-century chancery of Pope Innocent III may serve to illustrate the point: in his opinion on a case involving a female monastery in the diocese of Utrecht, Innocent mentions the *fragilitas* of the women in question. In the context of the decision as a whole, this is a passing mention, offered without comment,⁶⁷ suggesting that female weakness or incapacity was even by the early thirteenth century taken as a matter of course by men trained in the law. These assumptions were especially critical when the particular decretal concerned women’s actions in court. There seemed to be some debate, for example, as to whether it was legally permissible for women to give testimony in ecclesiastical court. Gregory IX, in his *Liber extra*, cites Isidore of Seville’s threefold categorization of who might and might not serve as legal witnesses:

Regarding witnesses: condition, nature, and manner of life should be considered. Condition: that they be free, not slave, because sometimes a servant may be pressured by his master to suppress the truth. Nature: that they be male, not female, for females always

produce varying and changeable testimony. Manner of life: if guiltless and irreproachable of deed. But where a good life is lacking, trustworthiness is found to be wanting.⁶⁸

Isidore's dismissal of women's testimony as "varying and changeable" may hearken back to classical Roman notions of female *levitas*, thus reinforcing what may have been at the time only a minor note in the Roman legal assumptions about women. Yet canonists also recognized that there were certain situations in which a woman's testimony in particular could be not only valuable but even indispensable—in cases concerning the conduct of local clergy,⁶⁹ for instance, or to discern impediments to marriage.⁷⁰ And Pope Boniface VIII (r. 1294–1303) seemed to take for granted that women would regularly be giving testimony when he specifically stipulated that women could not be compelled to appear personally in court, whatever the cause, and that if their testimony was necessary, they might pay the expenses of a judge to go to them and take their testimony *in situ*.⁷¹

We might note that Boniface's opinion is predicated on a specific gender assumption of matronly modesty; he begins, "Women, for whom it is fitting neither to wander about, nor to mix with the crowd of men."⁷² That this decretal substantially reproduces the language of the earlier Roman legislation discussed at the beginning of this chapter indicates that, by the late thirteenth century when Boniface was pope (coincident with the early part of Jaime II's reign in the Crown of Aragon), principles of Roman law, including their assumptions about gender, were already well integrated into the legal culture of the popes and their curia who would be making canon law. The fact that Boniface, like Innocent before him, felt that he did not need to elucidate such statements about women's legal nature suggests that an assumption of female weakness or incapacity was something that both he and his audience took for granted. That audience would have been made up primarily of men schooled in the legal faculties of the medieval universities, and as these men returned to their homelands, they brought with them a new conceptual vocabulary with which to talk about the issues encoded within that law and incorporated those ideas into the law codes that they had a hand in compiling or adjudicating.

Gendered Legal Assumptions in the Crown of Aragon

By the late thirteenth and early fourteenth centuries, the *ius commune* constituted a substantial presence in the legal culture of the Crown of Aragon and exercised an accordingly profound influence on the construction of legal ideas

about women. That these ideas were in the air during the thirteenth century when many of the law codes of the Crown territories were being formulated suggests ways in which to read gender ideas as they appear in the written law of the composite monarchy. The natural subordination of women to men that Gratian and his successors spoke of appears in Catalano-Aragonese law often enough to make its influence on legislators apparent. The assumption of male headship is most clearly visible in the many laws governing marital property (an issue that will be discussed more fully in Chapter 2) that flatly state that part of the husband's responsibility is to support his wife financially, an obligation referred to as the "burden" (*onera*) of matrimony.⁷³ Since the same laws assume that part of the property that he would use to bear this burden remained the legal property of his wife, it seems clear that, in economic terms at least, lawmakers envisioned marriage as an unequal partnership between male and female, with the wife largely dependent on her husband.

A much more obvious contribution of the *ius commune* to the gendered legal assumptions of the medieval law codes of the Crown of Aragon is the principle of female weakness or incapacity. The *Furs* of Valencia state this principle most baldly when they mandate the need to protect women's marital property, asserting that a husband could not encumber the dotal goods without his wife's consent because "the fragility of the female sex should not be turned against her or result in the diminution of her goods."⁷⁴ The assumption of female vulnerability also influenced penal law: the *Fueros* of Aragon, "desiring to have compassion for the female sex," stipulated that a woman might not be imprisoned for any debt or fine arising from a civil offense, unless she had first liquidated her goods in an attempt to pay off the debt.⁷⁵ The *Furs* of Valencia are even more specific on the issue of penal law and gender, opposing the imprisonment of women except for the gravest crimes. If royal officials had to imprison a woman, the *Furs* recommended that she be housed separately from the male inmates. But the *Furs* also urged judges to consider substituting corporal or pecuniary penalties for imprisonment,⁷⁶ suggesting that the fragility or weakness alluded to in the law codes was based on an assumption of women's sexual vulnerability, rather than on a reluctance to administer punishment that would be detrimental to their physical well-being.

These assumptions of female dependence and fragility dovetailed with the assumption of natural womanly modesty. In the Code of Tortosa, we see an echo of a principle present in both Roman and canon law, that women should not be compelled to appear personally in court for any contract that they signed with their husbands, whether or not their husbands were present.⁷⁷ The

Tortosa law contains no specific or even implied reference to matronly modesty, but it seems likely that this law, so similar to its Roman and canonical antecedents, was adopted under similar assumptions, or at the very least with the Roman precedent in mind.

The principle of female dependence extended to social status as well. The *Constitucions* of Catalonia, to take one example, linked a woman's social condition to that of her husband. If a woman had no husband, past or present, her status was determined according to that of her nearest male relative.⁷⁸ This does not, however, mean that women had no legal personality of their own. One Valencian statute stipulated that women were not to be held responsible for their husband's crimes,⁷⁹ implying an understanding that spouses had independent legal (and moral) agency. But as Thomas Kuehn has pointed out, even though we may take as a given that legal ideas of female subordination did not preclude female legal personhood, a medieval woman's legal identity was still in many ways contingent on an assumption of male headship of women.⁸⁰

Creating Legal Discourse: Lawyers, Litigants, and Neighbors

The *ius commune* thus added not one but many elements to the question of women's legal personality in the Middle Ages. It was not monolithic; rather, it reflected an ongoing debate about women's roles in the society that produced those legal traditions. This debate would be carried on in the later medieval societies that adopted those traditions and reflected in the rulings and writings of the *ius commune*-trained jurists who adjudicated cases involving women; it was also reflected in a broader legal culture that female litigants themselves helped to shape.

The Courts

Our analysis of women's interaction with the gender system encoded in the *ius commune* and the Iberian codes it inspired might well begin at the courtroom door. But which court? By the beginning of Jaume II's reign, female litigants (or men litigating against them) in the Crown of Aragon were confronted with numerous options. In many cases, the best choice would not have been a secular court at all but the local ecclesiastical court. Canon law, especially sacramental law, touched on the daily lives of all medieval Christians, and since marriage was one of the most heavily regulated sacraments in the later Middle

Ages,⁸¹ a large number of cases involving women and marital matters—especially petitions for ecclesiastical separation—would not have appeared in the records of the secular courts. On the other hand, traces of these cases appear in the ancillary suits over sex, violence, or property that were the province of the secular courts. Furthermore, it would be a mistake to conflate women's litigation with marriage litigation. As we shall see in the following chapters, while disputes or agreements with husbands often formed part of cases involving women, marriage per se was not always central to the case, nor were all female litigants married. Moreover, in cases not directly touching on matters of sacraments, theology, or religious practice, the secular courts of the Crown of Aragon claimed primary jurisdiction, regardless of the sex of the litigants.⁸²

For all three major territories of the Crown of Aragon, the ultimate arbiter of secular justice was the king himself. The highest court in the joint realms of the Crown of Aragon was the royal Audiencia, an assembly celebrated every Friday.⁸³ Justice in the Audiencia was administered personally by the king or, if he was away, by his lieutenant-general.⁸⁴ Litigants with enough money or influence might have access to the Audiencia as a court of first instance, but the Audiencia also served as the final court of appeals for lower courts in all three realms.⁸⁵ Additionally, records indicate that evocation—the practice of a superior court unilaterally “calling up” a case from a lower court—became more common during the reign of Jaume II. Royal authorities' stated reason for evoking lower court cases was the desire to safeguard the correct administration of justice, especially in cases where one party was at a disadvantage. To this end, the Audiencia declared itself protector of dependents, widows, the poor, and other *miserabiles personae*—a category interpreted broadly to include students, travelers, merchants, and others whose expatriate status meant that they lacked the full protection of local law.⁸⁶ In addition to the Audiencia's regular meetings, the lieutenant-general also held a special hour-long session every afternoon for cases involving minors, widows and the poor, and civil cases involving sums of fewer than twenty *lliures* (400 sous).⁸⁷ These special jurisdictions meant that a substantial body of cases involving women in particular could, at least theoretically, end up being heard in the highest court in the land.

It was, however, a general principle of jurisdiction that both civil and criminal cases should initially be tried in their own locality. In earlier centuries, this probably would have been a seigneurial court or the court of a locally elected official,⁸⁸ but by the late thirteenth century, it was likely that a woman who lived near a town of any moderate size in the Crown of Aragon would

be appearing in the court of a royally appointed judicial representative. In the counties of Catalonia, a litigant's first stop, if he or she lived in the confines of a town or village, would probably be the court of the *batlle*.⁸⁹ By the reign of Jaume II, the *batlles* were judicial officials who represented royal interests in a given town or village, usually as a counterweight to a locally elected council. The *batlle* was judge-ordinary for his town or village and the immediately surrounding territory, and was empowered to adjudicate both civil and petty criminal cases, as well as cases between Christians and Jews.⁹⁰

The *batlle* could not, however, judge persons of high status or cases that involved bloodshed (either in the commission of the crime or its punishment). For these cases, as well as those originating outside the geographic boundaries of a *batllia*, a litigant's court of first instance would be the court of the royal official known as the *veguer*. The *vegueries* encompassed broader swaths of territory than the *batllies*, generally corresponding to the boundaries of older counties or seignorial jurisdictions. The *veguer's* competence was also conceptually broader than that of the *batlle*, comprehending all types of criminal and civil cases, litigants of high and low estate, and imposition of fines, corporal punishments, or imprisonment. In essence, there were few limits to the type of cases the *veguers* could hear, which rendered them the most important source of secular justice in their territories.⁹¹

Both *veguers* and *batlles* might be assisted in their duties by semi-independent lieutenants (sub-*veguers* and sub-*batlles*) who reported to them but who were empowered to act on their own authority in judicial and administrative matters.⁹² Likewise, as the offices of *veguer* and *batlle* were political appointments that did not require any particular judicial training, each *veguer* or *batlle* would have as a member of his staff a legal expert (*iurisperitus*) who had received formal legal training and with whom the *veguer* or *batlle* was required to consult in deciding cases. This consultant would be the one to try the case and evaluate the evidence, though pronouncing the verdict remained the prerogative and duty of the *veguer* or *batlle* himself.⁹³

The kingdoms of Valencia and Aragon possessed similarly overlapping local and regional judicial institutions and officers. The kingdom of Aragon had its own system of *bailes* (corresponding to the Catalan *batlles*) and *merinos*, with a dozen *merinados* located throughout the kingdom by the late thirteenth century and numerous smaller *bailíos* within the larger *merinados*. But unlike Catalonia, where *veguers* and *batlles* exercised moderate to broad judicial and administrative authority, the function of the Aragonese *merinos* and *bailes* was primarily administrative. The judicial responsibilities of these two

officials were more limited than those of their Catalan counterparts, generally restricted to trying cases involving royal properties, collecting fines or settlements, and arresting defaulters on judicial fines. *Merinos* might also detain malefactors but only in response to a specific royal order and not as a function inherent in their office.⁹⁴ Most civil and criminal cases in the later medieval kingdom of Aragon—those that did not touch directly on royal properties or officials—would have been heard by a *justicia*, an official charged with hearing both civil and criminal cases in a given locality. The Aragonese *justicias* were technically royal appointees but were drawn from the *caballero* class of a given locality and so tended to serve local political interests and the *prohombres* of their towns—a tendency that was at its strongest during the last two decades of the thirteenth century, when the Aragonese *uniones* temporarily won extraordinary concessions of political and judicial autonomy from the king.⁹⁵

Another official of the Aragonese judicial system who appears frequently in the following pages was the *zalmedina*, an office that was peculiar to the districts of Zaragoza and Huesca. In Zaragoza, where there was no *justicia*, the *zalmedina* seems to have been the major judicial official, probably exercising jurisdiction similar to that of *justicias* in other territories. The situation is less certain in Huesca, which had its own *justicia*, but it is clear that the office was more than merely honorific, as the *zalmedina* is the first administrator named in Pere II's 1278 privilege to the city of Huesca. When we take into account that the *zalmedinas*, unlike other Aragonese judicial officers, were elected to their positions by the town's leading citizens, rather than appointed by the king, and were subject to regular local assessment, it is reasonable to conclude that these officials were the product of special concessions won by local factions in these two important urban centers. Nevertheless, the *zalmedinas* do appear regularly in the cases in the following pages, indicating that their judicial authority was on a par with that of the *justicias* elsewhere in Aragon or with the *veguers* and *batlles* of Catalonia.⁹⁶

Finally, the administrative apparatus of justice in the kingdom of Valencia was Aragonese in form but Catalan in substance, reflecting the tension between the interests of the early the Aragonese seignorial settlers on the one hand and the monarchs' rapid centralization efforts on the other. Royal justice in Valencia was primarily the responsibility of *bayles*, royal judicial and administrative officers answering to the *bayle general*, who himself answered to no one but the king. Originally appointed to protect the royal patrimony, the *bayles'* legal competence was rooted in civil cases, but the *bayles* also claimed jurisdiction over all civil or criminal cases that touched on royal interests or

over the strategic territories of sea and coastline, as well as all cases where both parties were Jews or Muslims.⁹⁷

The *bayles*' increasingly broad jurisdictional claims brought them into frequent contact with another important group of judicial officials: the *justicias*. Created by Jaume I to mediate conflicts between urban residents and the king, the Valencian *justicias* were charged with hearing and judging both civil and criminal cases throughout their town and its surrounding district "with the counsel of the wise men [*probi homines*] of the city" and aided by an assessor trained in law. Valencian *justicias* had jurisdiction over cases between Christians and Jews or Muslims, and their mixed criminal and civil jurisdiction eventually resulted in the office being split, in 1321, into more specialized offices that did not appear elsewhere in the Crown territories at that time: a *justicia criminal*, a *justicia civil*, and eventually a *justicia de trescientos sueldos*. Like the Aragonese *zalmedinas*, Valencian *justicias* were held accountable to the cities and towns that were their seat, serving only one-year terms, after which they were required to present an accounting of their actions for audit. And also as in Aragon, the Valencian *justicias* were drawn from the nobility or the urban patriciate, and their authority was closely bound to the municipal councils; the *justicias* therefore tended to represent those interests, acting as a counterbalance to the authority of the king's *bayles*.⁹⁸

The jurisdictional map in Valencia was further complicated by the presence of the office of procurator general (later governor general), the monarch's leading judicial and administrative representative for the kingdom of Valencia as a whole. The procurator general was assisted by lieutenant procurators stationed throughout the kingdom who handled judicial affairs in much the same way as the *veguers* in the Catalan territories. The procurator was supposed to have jurisdiction primarily in cases involving the public good—that is, those cases touching on matters of public order, the defense of borders and of royal property, the defense or prosecution of royal officials, and certain high crimes such as treason, sodomy, counterfeiting/forgery, or heresy.⁹⁹

Procedure: Civil, Criminal, and Inquisitio

The cases dealt with in the following chapters come from a variety of these courts—courts of *veguers*, *batlles*, *justicias*, *procurators*, and even the royal Audiencia. But since these were either arms of royal justice or subject to appeal in the royal courts, and since, by the reign of Jaume II, the royal courts had adopted the procedural rules of the *ius commune*, a litigant would be subject to a similar process no matter which of these courts her case was heard in.¹⁰⁰ And

while Romano-canonical procedure prohibited a woman from acting in court on behalf of anyone but herself or her minor children, women did regularly engage with these procedures on their own behalf as plaintiffs, defendants, and witnesses.

The procedure that litigants and witnesses would be subject to in the royal courts of the later medieval Crown of Aragon is well illustrated by a fourteenth-century investigation of a charge of official misconduct, conducted in the court of Bernat Dalcamora, the lieutenant procurator in the Valencian town of Vall d'Uixó. Although the elements of procedural law varied slightly throughout Western Europe and over the course of the high and later medieval centuries, a civil suit usually began when a plaintiff presented to the judge either an oral or a written complaint (the *libellus*). In 1302, Maria, daughter of Miquel de la Serra, appeared in person to lodge such a complaint against the *justicia* of the town of Cabanes d'Arc, Bertran Maçquefa. According to Maria's accusation, Bertran had, with the assistance of his companions Bernat Maestre, Bernat de Bonet, and Bertoli Maçquefa, set upon her one Sunday after mass, publicly denouncing her as a whore. They then proceeded to administer a public beating, pulling her hair, hitting her with their fists, and kicking her. Eventually, they expelled her from the town, prohibiting anyone from giving her aid or shelter, on pain of a fine of sixty sous.¹⁰¹

If the judge in the case deemed the complaint worthy, the court's next action would be to summon the defendant and give him or her the opportunity to file a formal response to the articles of the *libellus*. In this particular case, the lieutenant procurator summoned all four defendants into his presence separately, where he had the denunciation read out to them. All four exercised their right to respond to the charges, and all four individually denied that anything Maria said was true.¹⁰²

This complaint-and-response was all part of the pretrial phase, designed to help the judge formulate the charges around which the actual trial (*litis contestatio*) would revolve. The trial itself began with both parties taking calumny oaths, that is, swearing that they were litigating for legitimate reasons, not out of malice, and that the testimony and evidence they would present was genuine. The plaintiff then presented his or her charge and the defendant his or her response to the charges, usually in a written form that incorporated the many statements and revisions made during the earlier pretrial phase. In this case, the lieutenant procurator presented a written summary of the articles (*capitols*) that he would be deciding in the course of the investigation. The articles in Maria's case (condensed here for clarity) were as follows: that on

the specified day, in front of the church of Santa Maria, Bertran Maçquefa, acting in his capacity as *justicia*, had confronted Maria and told her that she was to be expelled from the town, apparently without reason; that Bertran had publicly denounced her as a whore, saying: “*muyre, muyre, la bagassa*”; that he had taken her by the hair and thrown her to the ground, striking her many times with both punches and kicks; that his accomplices had also punched and kicked her; that she had run off and hidden in the house of Alexander de Foix, for fear that the men would murder her; that Bertran had gained the office of *justicia* by corrupt means; that all four men had broken down the door of the house where she was hiding and, on Bertran’s order, dragged her out and continued to beat and kick her and pull her hair in the public thoroughfare before finally expelling her from town. At the conclusion of this summary was Maria’s affirmation that all these things were common knowledge (*fama publica*) in the town of Cabanes, and beyond.¹⁰³

Standard civil procedure gave each of the defendants the opportunity to respond to the charges, which, again, all four defendants in this case categorically denied.¹⁰⁴ The next step was for the court to consider the evidence. The day after the charges in this case were read and answered, the procurator’s court heard the testimony of fifteen witnesses—twelve men and three women. Most of them testified to Maria’s public expulsion from town, some to the blows, and more to the fact that they had heard Maria’s loud cries.¹⁰⁵ After this, if the case had documentary evidence—for example, wills or deeds of property sale—these would be entered into evidence.¹⁰⁶ Since, however, the parties in this particular case had no documentation, the lieutenant procurator announced that he was terminating the investigative phase and was sending a written record of the claims and witness statements to both the parties involved and to the procurator in the city of Valencia. At the conclusion of this trial transcript, the lieutenant procurator notes that he is summoning the parties to his court to give their final testimony.¹⁰⁷

We know from procedural manuals that this phase of the procedure would have been followed by oral arguments, the lieutenant procurator’s deliberations, and his final sentence.¹⁰⁸ But our information about this particular trial ends here: unless there was a procedural misstep or an appeal that would have occasioned further correspondence, the verdict rendered in a lower court would have been transmitted to the parties in the case and possibly preserved in a local archive. Since records from these local courts survive in only very small numbers, we rarely see the final stages of the process in action. We can, however, use this trial, combined with the more general

observations on Romano-canonical procedure, to make a few observations. First, we see that the principles of the *ius commune* had penetrated into the judicial atmosphere, not just in the realm of substantive law but also in matters of procedure. We may note the care with which the lieutenant procurator outlined the steps he was taking, mentioning at one point that he was acting specifically according to the *Furs* of Valencia¹⁰⁹ and in another place that, according to the *Furs*, each judge ought to diligently seek out the truth, not only of the facts of the case but also of the quality of the testimony that he receives.¹¹⁰ It is clear, then, that royal judicial officials like Bernat Dalcamora were using Romano-canonical procedure, even if only as mediated through regional or local law codes. Lawyers for plaintiffs and defendants were also wise to familiarize themselves with the complexities of Romano-canonical procedure, not just as an aid to navigating the process laid out for them, but also because they could take advantage of procedural nuances to aid their clients. In many of the cases analyzed in the following chapters, a litigant or his or her representative might use knowledge of procedure as a delaying tactic, leveling numerous exceptions to charges in the pretrial phase and producing long lists of witnesses for the trial phase, along with equally extensive lists of questions to be put to each. In cases involving poor litigants—for example, the abandoned married women treated in Chapter 2 who were suing for return of their dowries—the length of a trial could delay a financial settlement to the point where it became meaningless. In such cases, royal judicial authorities sometimes exercised their option to apply a summary procedure, which deemed the pretrial *libellus* unnecessary and allowed accusers to bring their complaints orally. Judges in these cases could reject exceptions and other measures introduced to produce delays and could limit both the number of witnesses and the length of depositions.¹¹¹

We can also observe from the progress of Maria's case that a woman's interaction with the judicial system, even if begun in her immediate neighborhood, might eventually take her far beyond her own locality: consider that Maria's complaint was against a local *justicia* in the town of Cabanes; that she lodged her appeal with a second-tier royal official in the town of Vall d'Uixó, some thirty miles to the south; and that he in turn reported to the procurator, whose seat lay in the city of Valencia, some thirty miles farther still. This meant that, while an individual woman's ability to draw on local associations and support networks could be critical (as will be discussed below), the outcome of the case, as it moved progressively farther from a litigant's home territory, would come to depend ever more heavily on how well she could adapt

her legal narrative to the conceptual vocabulary and unwritten assumptions of the law and its agents.

Women who entered into criminal court underwent an experience similar to those undertaking civil litigation. With the exception of Valencia after 1321, the same courts heard both civil and criminal cases during this period,¹¹² though different jurist-consultants might specialize in different types of cases, especially in larger jurisdictions that could support more than one judge. Even procedure could be similar: although the Roman law of the *Corpus iuris civilis* distinguished between civil and criminal procedure, early canon law made no clear distinction between the two. Later jurists agreed that a more stringent standard of proof needed to be applied in criminal cases; otherwise, differences in the actual *ordo* were slight, and even when medieval commentators began to draw distinctions between criminal and civil procedure, there were effectively few differences until quite late.¹¹³

Although there were a number of similarities between the criminal and civil procedures in the courts of the Crown of Aragon, thirteenth-century procedural developments led to at least one significant difference: by the reign of Jaume II, litigants in criminal cases might find themselves involved in cases tried under the procedure known as *inquisitio*. The word “Inquisition” is most commonly associated with Church-sponsored programs in the medieval and early modern periods to find and extirpate heretics and relapsed converts from Judaism.¹¹⁴ But we might also understand inquisition, uncaptialized, more generally: as a set of legal procedures developed during the high and later Middle Ages to prosecute crimes for which there was insufficient direct evidence to produce an accuser.¹¹⁵ Under normal medieval procedural rules, prosecuting certain crimes could be difficult, as courts could find a defendant guilty only if either he confessed to his crime or if an accuser could provide “full proof” consisting of the sworn testimony of two witnesses who had either seen or heard the crime being committed.¹¹⁶ Procedural law as taught in the law schools of the high and later Middle Ages required proof “as clear as the light of day” for a conviction in criminal trials, and only confession of the accused or uncontradicted testimony by two witnesses to the crime met this requirement.¹¹⁷

While the foundational principles for *inquisitio* dated back to at least the Roman Empire, the medieval elaboration of inquisitorial procedure was largely a response to the “occult” crimes of clerical indiscipline, especially clerical sexual incontinence.¹¹⁸ Since these crimes were hidden, their prosecution was initiated not by a *libellus* but by denunciation, persistent rumor,

or open scandal, and prosecuted *ex officio* by the court officials themselves, who assembled the evidence, interviewed witnesses, and interrogated the defendant. A small group of decretals by Pope Innocent III from around the year 1200 laid the foundations for the medieval version of this procedure. The first, *Inter sollicitudines nostras*, asserted that, even if no complaining accuser had come forward, a combination of infamy, open scandal, and seriousness of the crime could require that a clergyman suspected of an offense undergo a canonical *purgatio*.¹¹⁹ The second, *Licet heli*, specified ways in which specific procedures could be matched to different types of complaints and when and how to launch the *inquisitio*. In the cases of public *infamia*, where the crime was serious enough that a guilty verdict would result in canonical sanction, questioning of witnesses as to the truth of the rumors could—and should—be undertaken.¹²⁰

Even though *inquisitio* remained an extraordinary procedure,¹²¹ it made the transition from ecclesiastical to secular courts during the thirteenth century, where it was employed when no direct witness could be found, despite a persistent rumor of criminal activity. This made inquisitorial procedure ideal for prosecuting certain types of criminal litigation involving women, such as rape and adultery. However, although the essence of *inquisitio* was the fact that it could be launched *ex officio*, without a complaining witness, we should not understand “inquisitorial procedure” as a relationship strictly between the judge and the accused. *Licet heli* also clarified that the judge was not the accuser; rather, it was the rumor itself that “accused” the perpetrator. The trial was, in fact, initiated by public opinion, and the first job of the judge was to conduct a preliminary inquest to establish the truth of the rumor, before he could proceed to investigate the charge itself. *Licet heli* thus distinguished between a preliminary investigation to establish that a prosecutable offense had been committed (the *inquisitio famae*) and the actual inquest (*inquisitio veritatis*).¹²² This distinction would be clarified in canon eight of the Fourth Lateran Council, *Qualiter et quando*, which treated the question of which method and at what point a prelate must take the initiative to investigate—and possibly punish—his subordinates.¹²³ According to Innocent IV’s (r. 1243–54) gloss on this canon, in order for an *inquisitio famae* to lead to an *inquisitio veritatis*, the judge was required to find at least two upstanding community members to testify to the existence and extent of the rumor.¹²⁴

Common Knowledge in the Courtroom

The practical effect of this last stricture was to forge a strong tie between inquisitorial procedure on the one hand and community knowledge and opinion on the other. The process of integrating these two involved the incorporation of the specialized knowledge of legal professionals, who were exclusively male, with the common knowledge of all members of a community, both male and female. This general, often unsubstantiated knowledge about events came under the rubric of *fama*, loosely translatable here as “common knowledge” or “rumor.”¹²⁵ Court officers conducting inquests into criminal matters routinely inquired into what the talk was about an incident, and laypeople in the early fourteenth century seem to have had a basic understanding of what constituted *fama*. One example of the interaction between lay knowledge and formal court proceedings comes from the Valencian town of Alcira in 1296, when royal judicial officials launched a preliminary inquest into the murder of Bernat Gamiça, who had apparently been carrying on an affair with Geralda, the wife of Guillem Garret. Witnesses reported not only what they had seen but also the *fama* surrounding the murder: that Guillem had surprised Bernat and Geralda *in flagrante delicto* and had murdered Bernat in a jealous rage. When questioned as to what they meant when they said something was *fama*, witnesses’ answers varied slightly from person to person but were generally similar: *fama* was “what people say,”¹²⁶ “what the people say all over the place,”¹²⁷ or “that which the majority of people in any place affirm to be true.”¹²⁸ Variations on this theme continue to appear in testimony from other cases, where “witnesses” who had not personally seen or heard the crime in question reported that the accusations were common knowledge in the community. For example, in a case dating from the second half of the fourteenth century in the Catalan town of Vilafranca, when a man named Valentí Golet was accused of having murdered his wife Blanquina, royal prosecutors questioned several villagers as to what degree they had known the victim and whether they “knew or had heard tell” (*sab ni oït dir*) anything about her reputation (*fama*). Almost all witnesses testified to the same basic set of circumstances: that Blanquina’s husband had discovered her together with Pere Mísser, who had jumped out a window and broken his arm and leg while escaping. Some even went so far as to assert that this discovery was precisely what had provoked Valentí to murder his wife. Significantly, though, most of the “witnesses” had no first-hand knowledge of the events in question. One prefaced all his statements with the assertion that he did not know the truth of the matter (*dix que non*

sab res de veritat), and almost all the other witness statements were couched as repetitions of common gossip (*ha ojt dir comunament; es deya comunament*), with only one statement attributed to a person who supposedly had firsthand knowledge of the events and one other person claiming to have seen Pere Mísser's injuries, though not the incident from which they resulted.¹²⁹ While the records do not tell the outcome of this case, the part of the case that the official record does preserve is enough to suggest that "things that everybody says are true" could be damaging, if not damning evidence.

As this case illustrates, however, *fama* did not just mean the rumor about the facts of a case; it had a second related meaning of common knowledge about a person. Probably the most important reason that *inquisitio* was useful for prosecuting hidden offenses was that it allowed prosecutors to make use of a person's bad reputation (*mala fama*) as a basis for prosecution.¹³⁰ In the process of an inquest, officers of the court would question witnesses not just as to the facts as they understood them but also as to the reputation of the people involved. This conception of *fama* can be traced back at least to Isidore of Seville (560–636), who noted that *fama* is a two-sided coin—a term that may designate either illustriousness or notoriety.¹³¹ By the later Middle Ages, inquiries into a person's *fama* within a community had become routine in criminal inquests. In some cases, these inquiries concerned the *fama* of those giving the testimony: questioners in criminal inquests routinely asked witnesses to provide not only their name and residence but also whether their testimony had been affected by love, hate, coercion, subornation, or any relation to the defendant or accuser. While an *inquisitio famae* might include testimony from persons who might be biased for or against the defendant, such testimony was not given under oath, suggesting that inquisitors considered it supplementary.¹³² Reliable witness testimony had to come from persons of good repute and unblemished motive: if the accused could demonstrate that the witnesses were disreputable (*viles personae*) or that they were acting out of ulterior motives, their testimony would lack probative value, and the judge would thus lack grounds to launch an *inquisitio veritatis* with regard to the crime itself.¹³³

More important, however, was the *fama* of the accused. *Licet heli* had established that bad reputation could serve in an *inquisitio famae* as part of the grounds for bringing a case to trial,¹³⁴ and later commentators clarified that public scandal (that is, publicly flaunted misconduct, as opposed to the open secrets that produced *fama*) could likewise serve as grounds for launching an inquest into the crime itself.¹³⁵ In the case involving Blanquina and Valentí Golet, for example, witnesses described not only the gossip about the murder

but also Blanquina's generally bad reputation. According to witnesses, it was common knowledge in Vilafranca that she had been four or five months pregnant when Valentí had married her and that she had carried on an affair with Romeu Comes, *veguer* of Vilafranca.¹³⁶ Similarly, witnesses in the Garret/Gamiça case reported on the respective reputations of the two men in question, asserting that Garret was "a good man who kept good company" (although one witness noted in passing that he was known to patronize prostitutes), while Gamiça was rumored to have been a serial adulterer whose actions had prompted at least one of his cuckolded victims to leave town in shame.¹³⁷

In this second case (and possibly in the first as well), these assertions about the reputation of the persons involved were made in response to direct questions from court officials, illustrating that, while *fama*-as-reputation was much more a social category than a legal one, a person's reputation within the community could have legal implications.¹³⁸ At its worst, a person's *mala fama* could be converted into *infamia*, a condition that went beyond mere reputation and translated into a loss of legal personality that was difficult to reinstate. The concept of legal *infamia* dated back to the late Roman Republic and by late antiquity was present in both Roman and canon law, making its way from there into the medieval law of the *ius commune*, where it manifested as a list of types of persons barred from giving testimony. In practice, however, the construction of the medieval terminology regarding infamy, both legal and social, tended to blur the distinction between the two. As early as the age of the Bolognese jurist Irnerius, medieval commentators on Roman law sometimes interpreted the Roman-law term "infamia"—which in Roman law meant legal *infamia*—in a way that conflated it with the idea of *fama*-as-reputation: Irnerius, for example, defined *infamia* as a "decrease or consumption of reputation."¹³⁹

Whether due to such terminological confusion or to a lingering sense that justice was a community affair,¹⁴⁰ it seems clear that talk, gossip, and "common knowledge" about a person could play a role in judicial proceedings, just as could common knowledge about events.¹⁴¹ Historians studying England's common law courts have argued that trial records were "steeped in gossip and the collective memory of the village," to the point where substantive legal principle meant less than community reputation,¹⁴² and that the common law system, with its jury trials and emphasis on standing within the community, might be contrasted with *inquisitio*, a package of procedures whose main emphasis was fact-finding.¹⁴³ However, while this general distinction is certainly

true to some extent, we should not ignore that a person's reputation within a community did figure in to the continental legal system in important ways. For one, a person's *fama* determined the degree to which his or her testimony would be accepted. In court proceedings, it was not just the reputation of defendants and plaintiffs that mattered but that of witnesses, whose *fama* affected the credibility of their testimony. Even more significant, however, was the fact that *fama* could be the "reasonable cause" that sparked a full-fledged *inquisitio* into a particular case. Most civilians proceeded in accordance with the position taken at the Fourth Lateran Council, which made *fama* the procedural threshold that allowed judges to proceed against suspected criminals ex officio, whenever there was sufficient *fama* that someone had committed a crime.¹⁴⁴ That is, *fama* could decide matters of law (i.e., whether there was a case to be made) but not matters of guilt or innocence.¹⁴⁵

In order to establish that a set of circumstances was indeed common knowledge, inquisitors questioned witness groups that were as diverse as possible—not only going outside litigants' ties of kin and obligation to avoid exceptions but going so far as to incorporate people from various neighborhoods, families, sexes, and social ranks (though nobles would likely have been less important in many cases since their knowledge rarely extended to everyday village business). In the Garret/Gamiça murder case mentioned earlier, the long list of fifty-three witnesses questioned over the course of three days included four notaries, one surgeon, one Jew, and twelve women.¹⁴⁶ Inquisitors might also call in experts to introduce specialized knowledge into the testimony. For example, the four notaries may have represented the sum total of the notaries in a town as small as Alcira, but because people called in notaries any time they needed a contract or agreement drawn up, both judicial officials and laypeople might have believed notaries' knowledge of the community to be more extensive than that of the average community member. Additionally, because a notary might have received formal legal training,¹⁴⁷ one can well imagine that their fellow legal professionals might regard their testimony as more reliable. Notably, three of these four notaries were among the first six witnesses called, preceded only by the two eyewitnesses to the events surrounding the murder.¹⁴⁸ In addition to the notaries, another witness in the same case, Bernat Estefán, contributed his own brand of specialized knowledge: although many witnesses had claimed to have seen the victim's wounds and speculated that those wounds had been made with a sword or dagger of some kind, Bernat Estefán told the *veguer's* court that, after having found Bernat Gamiça's murdered body under the bed, he had picked the victim up by the hair and looked

for a pulse but, not finding one, determined that he was dead. Asked how Gamiça seemed to have been wounded, the witness replied that it was probably a sword or dagger of some kind that made the wound. Unlike the other witnesses, however, Estefán asserted that this was no mere guesswork, telling the judges that he was a surgeon and could tell such things by touch.¹⁴⁹

The use of expert witnesses such as this one illustrates the intersection of the specialized knowledge represented by lawyers and the community knowledge represented by ordinary witnesses. We should not, however, assume that expert involvement—whether from male legal officers or male professionals called in to provide professional expertise—meant that the courtroom excluded women's voices. In fact, the presence of a dozen women in the group of people questioned also reflects the importance of gender in the construction of public *fama*. Diversity of witness lists could establish that knowledge was common to all, but the inclusion of women also reflects an understanding at the time that some types of knowledge may have been gendered: later medieval courts seem to have regarded women as authorities on matters of birth, death, kinship, marriage, and sexuality, as well as the household possessions of neighbors, with whom they might often dine as guests.¹⁵⁰ In the Garret/Gamiça case in particular, the first two witnesses questioned were women. The reason for and placement of the first—the unfaithful wife who watched her husband burst into her rooms, threatening her lover with a dagger—is obvious. But the second witness (and the one who gave the second-longest statement) was also a woman: Bevinguda the wine-seller, whose regular visits to the couple's home to deliver wine and at times assist in some household tasks had made her a frequent witness to the wife's infidelities, to the point where Gamiça had felt comfortable asking her where his married lover was and whether her husband had gone out.¹⁵¹

While knowledge such as Bevinguda's might not rely specifically on gender, in other cases it did. This was especially important in cases touching on sexuality and the body. In some cases, this might mean bringing in women to test a couple's claim of male impotence as grounds for marital annulment.¹⁵² In others, women might be asked to verify a young woman's virginity, as was the case when, at the request of the father of an alleged rapist, the sub-*veguer* of Besalù pressed into service three respectable women: Maria, daughter of the late Ponç de Salevaya, Sibila, wife of Berenguer Mir of Girona, and Guillem, widow of the butcher Pere de Gradu of Besalù. These women, under the supervision of the *veguer's* judge Arnau de Batet, were charged with conducting a thorough physical examination of the purported victim, Ermessenda

Sabater, to determine whether she was still a virgin.¹⁵³ The case documents do not specify whether the panel's composition of unmarried woman, wife, and widow was the result of a deliberate choice, but this selection does at least suggest not only that women had access to certain types of knowledge, but also that the courts may have recognized that different types of women would bring different knowledge to bear on a given case.

In general, we can regard *fama* as a mixture of social fact and legal fact, consumed by the same people who produced it, as well as by the law courts. There was no single causal connection between *fama*-as-reputation and *fama*-as-legal status; rather, there existed a complex link between the two, mediated by authoritative legal texts and by the traditions of learned jurists. Laypeople might construct distinctions of reputation that did not always match up with those of learned law,¹⁵⁴ but what transformed social *fama* into legal *fama* was its constraint within parameters outlined by legal professionals.¹⁵⁵ That is to say, reputation carried legal weight only when it was translated into terms actionable at law.

The growing specialization and professionalization of the law played an important role in this process of translation. By the time that the cases discussed in this and the following chapters came to court, a litigant, whether male or female, had to navigate a tortuous path through not only the complicated and overlapping jurisdictions of the Crown of Aragon but also through the morass of procedural law. The later Middle Ages saw a proliferation of specialized interpretive guidebooks, written by university-trained legal scholars and meant to aid legal practitioners in navigating their way through the complexities of Romano-canonical procedure.¹⁵⁶ Specialized procedure also required specialized legal professionals: advocates to advise both plaintiffs and defendants on the law, and judges and legal experts to sort out the legal nuances for the *veguers*, *batlles*, *justicias*, and assorted other judicial officers who were not themselves trained in law. Considering how complicated the law had become, we should not be surprised to see female litigants operating in court with the assistance of procurators, advocates, and other legal representatives. While some of this mediation of women's participation in their own litigation may have been the result of gendered ideas about women's role in the public forum of the courts, the only legal bar in the *ius commune* on women's participation was that they should not be compelled to represent others in court, and even this rule had its exceptions. While gender undoubtedly played a role in women's frequent recourse to procurators and other male representatives, the very complexity of the court system probably also had a lot to do with it:

as James Brundage has pointed out, by the later Middle Ages (much as in our own time), it would be a foolish business indeed for an untrained layperson to attempt to navigate the court system unassisted.¹⁵⁷ On the other hand, the procedural innovations that relied on *fama* meant that community knowledge about both events and people would take on increasing importance, giving laypeople, both male and female, a voice in the outcome of a legal case, thus making them participants in the shaping of women's legal identity.

Conclusions

The later medieval period in the Crown of Aragon was a time of great ferment in the culture of the learned law. Spurred in part by the increasing number of jurists trained in the *ius commune* in the first half of the thirteenth century, the count-kings of the Crown of Aragon sponsored new codifications of regional law, drawn up according to the paradigms of Roman and, to a lesser degree, canon law. Although the penetration of the new law was by necessity incomplete—monarchs had to contend with persistence of local custom, seigneurial jurisdictions, semiautonomous Jewish and Muslim communities, and even antiregalian *uniones* in Aragon and Valencia—by the end of the thirteenth century the *ius commune* formed the fundamental underpinning of both substantive and procedural law throughout most of the Crown territories.

As the next chapter will show, both Roman and canon law, like law codes throughout early and high Middle Ages, addressed situations involving women according to relational category—that is, whether they were unmarried women, wives, or widows. What the *ius commune* added to the legal landscape was a conceptual vision of “woman” as a broad legal category. The overarching ideas about women in the *ius commune*—that they were, as a group, vulnerable, weak, or naturally modest, and thus in need of male protection in their dealings in the public sphere—permeated both Roman and canon law. Yet even during the centuries that these gendered legal assumptions were taking shape, they were the subject of some debate and may have been honored as much in the breach as in the observance.

Catalano-Aragonese jurists, legislators, and litigants inherited these overarching ideas about women's legal nature, but it is only fair to assume that they must have approached these sweeping assumptions with some of the same ambivalence as their predecessors. The inherent contradictions of the legal culture as it related to women are perhaps most evident in the field of procedural law.

Women's supposed incapacity was belied by their willingness to go to court to defend their own interests; medieval jurists' frequent recourse to women's testimony demonstrates that the written law's image of women as vulnerable and incapable legal beings was not always reflected in practice.

Yet we cannot pretend that Romano-canonical ideas about women in general had no impact on women's lives. Nor should contradictions be oversimplified to a contest between written law and reality of women's experience, or even necessarily read as women subverting the law. Jurists and laypeople alike seemed quite capable of working with the contradictions that were built into the system. In fact, embracing the gendered conceptual vocabulary of the *ius commune* was essential to the legal strategies of female litigants in this period. Returning to the case outlined at the beginning of this chapter, Ermessenda de Cabrenys's procurator tried to use gendered legal ideas to exempt his client from the obligation to appear in person to answer charges brought against her. Although this defense strategy ultimately proved fruitless (both the *veguer* and his judge-ordinary insisted that Ermessenda appear in person), it seems at least reasonable in the context of the Roman law revival of the high and later Middle Ages. There was, however, a catch for women like Ermessenda who might choose to employ such a strategy or have it employed on their behalf: Roman ideas about the legal status of the *materfamilias*, like many other later medieval legal ideas about gender, were firmly bound to the Roman and ecclesiastical gender systems that helped to produce them, and medieval legal representatives had no cause to try to divorce the one from the other. A Roman praetor might have felt comfortable with the language that Berenguer used in defense of his client Ermessenda, referring to her "matronly modesty" (*matronalis pudoris*)¹⁵⁸ and saying that the *veguer*'s order that she present herself personally in his court was "contrary to the modesty and shame of females" (*contra pudorem ac verecundiam feminarum*)¹⁵⁹—all of which hearkened back to his opening argument that it was inappropriate for a *materfamilias* to mix with the crowds of men at the law courts.¹⁶⁰ Ermessenda's procurator thus used a provision of Roman law with a specific gender meaning—that the nature of women made it inappropriate for them to be forced to appear in the implicitly male world of the law courts—in order to assert his client's immunity; this, despite the fact that Ermessenda's previous business dealings had already proven her quite capable of undertaking legal action on her own behalf.

Ermessenda de Cabrenys's case before the legal authorities of Girona is not only located at the intersection of law and gender but also illustrates the complexity of the relationship between the two. The reception in the Crown

of Aragon of the Roman and canonical legal traditions that formed the *ius commune* added an element to the interplay of law and culture that would not have been present a little over a century earlier. Yet that element was not monolithic; rather, it encapsulated several ideas about gender as it related to women's standing before the law.

Jurists, litigants, and their representatives thus had not one or two gender ideas to choose from but many. As we shall see in the following chapters, some of these were applied to women in general, while others differed according to a woman's life stage, marital status, and reputation within her community. Social standing (where the documents allow us to discern it) could make a difference as well: Ermessenda de Cabrenys's position within the community and her ability to hire highly trained legal counsel mean that the ideas outlined in this chapter are more explicit in her case than they might be in others. Yet we might assume that this same set of often contradictory ideas ran through much of the later medieval jurisprudence involving women. The combination of increasingly complex substantive and procedural law with the importance of *fama* meant that many different types of knowledge went into the formation of both a legal identity and a court's verdict. How the interaction of those ideas played out often depended upon the particulars of a given case. If we wish to understand fully how the interaction of law and culture reflected or influenced women's situation in both law courts and life, we need to take into account not only written and received law but also the larger discourses of community reputation, social networks, and a woman's relationship with the men in her world—variables that are the subject of the following chapters.

Chapter 2

The Power to Hold: Women and Property

The conjugal life of Sibila and her husband Pere de Sala ended badly. In 1329, in the first of what turned out to be a series of bitter court battles, Sibila alleged that her husband had abandoned her and their daughter and had maliciously refused to support either of them financially; she was, therefore, suing her husband for the financial support owed her.¹ Pere, the *batlle* of the Catalan town of Borredà, lodged a counter-complaint that his wife was a notorious adulteress—a circumstance that would have legally absolved him of any obligation to either her or her daughter. As far as Pere was concerned, his wife had forfeited any claim on the financial support to which her dowry should have entitled her, and she and her child were on their own.²

This chapter will focus on the gendered relationship between women's economic position and the law. Unlike the much-studied phenomenon of the medieval English common law's *feme covert* (an adult woman whose legal personality was "covered" by her spouse),³ women in the Crown of Aragon maintained legal personalities distinct from those of their husbands, fathers, and other male relatives. This does not mean, however, that they were equal in the eyes of the law. In the area of property in particular, the romanizing law codes of the later medieval Crown of Aragon assumed a distinctly unequal relationship between men and women, with all economic decisions being made by the male head of household. This particular assumption is implicit in all written law about women's property rights and, as such, colored the existence of medieval women.

Questions surrounding women's access to and control of property in the Middle Ages have been the subject of a great deal of scholarship, generally undertaken with a view to describing the social effects of gendered property

law.⁴ This chapter asks a slightly different set of questions, revolving around the legal assumptions that underpinned both laws and litigation and the way that shifts in these underlying assumptions produced changes in women's ability to control their economic lives. Beginning with a survey of law codes from throughout the Crown of Aragon and samples of dotal contracts from judicial districts around the northwestern Mediterranean, I will briefly outline the way that this particular society conceived of women's relationship to their dotal properties. Having established the economic landscape of the later medieval household as background, the core of this chapter will examine litigation between women and their husbands or husbands' families regarding dotal properties, the outcome of which often depended upon conflicting interpretations of legal principles that had been developed more than a millennium earlier during the time of the Roman Empire. Women's property litigation reveals an internal contradiction in Catalano-Aragonese law, which sought simultaneously to protect women's property rights and to enforce a patriarchal household structure that gave the male head of household full administrative rights over and responsibilities for the family economy. An investigation of the ways in which jurists, family members, and women themselves negotiated between these two imperatives not only adds to our understanding of women's historical relationship to property law, but also shows how women adjusted their litigation strategies to engage with the gendered assumptions that underpinned those laws. More specifically, we find both widows and married women representing themselves in court in terms of an inherent female vulnerability and dependency that the purpose and outcome of their own litigation belie.

Dowry: Law and Practice

Called the *ajuar* in Aragon, *axuar* in Catalonia, and *exovar* in Valencia, dowry in the Crown of Aragon (as in the rest of medieval Europe) consisted of the property that a woman's family of origin bestowed on her at the time of her marriage.⁵ Legally, dowry could consist of either moveable or immovable goods, though in practice cash dowries dominated during this period. In a survey of fifteen dotal instruments preserved in the municipal archive of Girona during the reign of Jaume II, dowries ranged from 200 sous (for a marriage between a baker's daughter and a shoemaker)⁶ to 3,000 sous plus a significant trousseau (for a marriage between two families of the local minor aristocracy).⁷ Discounting these two as outliers, far from the mean, the average

dowry of the remaining thirteen couples was 680.8 sous, with the amount remaining relatively stable over the course of nearly four decades.⁸ This amount does not include the unspecified values of the trousseaus included in most of these contracts—these typically included one or two dresses (one contract specified that the woman's trousseau included two dresses, made of materials valued at 20 and 15 sous respectively⁹), bedding, and often a chest “with its contents”—presumably some or all of the woman's personal or household goods.¹⁰ While the Girona sample is small, its figures roughly align with those found in other territories in the Crown of Aragon around the same time: dowries in the lower Llobregat region just southwest of Barcelona averaged 48.2 *lliures* (964 sous) for the period between 1321 and 1330, and 43.6 *lliures* (872 sous) for the fourteenth century as a whole.¹¹ Half a century earlier, dowries of artisan women in the town of Perpignan averaged 500 sous.¹² Even over a century later, during the much-studied period of dowry inflation,¹³ figures in the region were not much higher: in fifteenth-century Valencia, artisan dowries clustered around 800–1,200 sous, while the dowries of women from laboring families were predominantly valued at between 400 and 800 sous.¹⁴

Less common, but important to consider nonetheless, were common-property marriages. Various known as *germania*, *farascha*, or *matrimonio mig per mig*, these were marriages in which all marital assets were shared equally, and neither party had responsibility for the other's debts. At the death of one spouse, the surviving partner would be left with their half of the marital property but with no claim on any of their deceased spouse's share.¹⁵ The Code of Tortosa makes provisions for such unions,¹⁶ as do the thirteenth-century *Costums* of the Vall d'Aran, which stipulate community of both marital goods and capital gains, especially in cases of settling debts incurred by one partner.¹⁷ Valencian law also allowed for common-property marriage and provided for the merging of both property brought into the marriage at its inception and capital gains acquired during the course of the marriage.¹⁸ Historians have generally linked this type of marriage with couples of lower socioeconomic standing, an arrangement born of necessity rather than choice, either because a woman's family was unable to afford a dowry, or because work among these classes was a collaborative endeavor, resulting in joint profits or losses that did not accord well with the separate property regime of a dotal marriage.¹⁹ But in her study of late thirteenth-century Perpignan, Rebecca Winer has argued convincingly against this set of assumptions, showing that women and men in *mig per mig* marriages came from a variety of economic levels. The one common characteristic was that the participants in this type of arrangement

tended to be artisans, tradespeople, or sometimes “professionals” like physicians²⁰—people whose wealth, in other words, came from their labor, rather than from landed income.

Winer’s observation suggests as a corollary a strong link between dowered marriages and the possession of real property during the later Middle Ages. Other historians, however, have pointed to the period between the eleventh and fourteenth centuries as a time of transition in the composition of dowries, which increasingly came to be made up of cash, rather than real property, suggesting that women’s status declined as a result of this shift. According to this line of argument, family lineage and any public authority that went with it were identified with real property, from which women were (at least theoretically) excluded; the rise during the high Middle Ages of the practice of primogeniture increased the tendency towards consolidation of real property holdings, meaning that dowries were more likely to be paid in cash to avoid breaking up the family’s landed holdings.²¹ But such conclusions tend to proceed from studies of the aristocracy; more broadly based studies of women’s testamentary patterns from this period suggest that, despite the increasing use of cash in dowries, women still controlled landed property, and that twelfth- and thirteenth-century dowries tended most often to be mixtures of cash and real estate.²² While the dotal instruments preserved in the municipal archive of Girona do not directly support the argument that women gained control of landed property through their dowries (all fifteen specified cash dowries, with no real property included), this may be due to the relatively small size of the surviving documentation. Indeed, broader surveys from other areas reveal that real property remained a component (if not always the dominant one) of nonaristocratic women’s dowries throughout the northwestern Mediterranean. Women at all levels of society held one-fourth of all the real property in the diocese of Marseille during the later Middle Ages;²³ likewise, women in fourteenth-century Manosque brought at least some real property to their marriages.²⁴ Almost half of the late thirteenth-century dotal contracts from the Perpignan territories of the Crown of Aragon contained real property,²⁵ and landed property also played a role—albeit a more limited one—in the dowries of Valencian artisan- and laboring-class women.²⁶ The fact that a woman’s husband managed the dowry while he lived meant that a married woman was excluded, at least in name, from direct control of much of her own property. On the other hand, the property remained in the woman’s ownership, if not her direct management, and she could therefore expect to come into control of it upon her widowhood.²⁷ In addition, women in the Crown of Aragon

might also possess separate nondotal property—including landed property—independent of their husbands' authority.²⁸

The Girona archives also contain the occasional contract in which married women entitled to inherit land signed away rights to unspecified landed inheritances in exchange for cash settlements: one, for a *draper's* daughter, for 700 sous; the other three, for women of unspecified status: one at 1,000 sous and two at 2,000 sous each.²⁹ The fact that all four contracts also provided for a trousseau similar to those specified in the dotal instruments, combined with the fact that for none of these cases is there a corresponding dotal instrument in the records, suggests that these exchanges were meant to provide an already married woman with a dowry, after the fact. The relatively high amounts (all at or above the average amount for the normal dotal contracts for the region), combined with the fact that the payments were specifically meant to substitute for both hereditary and testamentary claims,³⁰ further suggests that these contracts reflect an attempt on the part of the families of the upper strata of Gironese society to practice a form of primogeniture by consolidating their landed holdings, which often meant taking real property out of the hands of women in favor of their male siblings.

Whatever the composition of the dowries themselves, women in the Crown of Aragon were linked to the landed economy through the guarantees on their dowries. When dowries were made up of cash or other fungibles, their depletion was a matter of course; husbands were therefore expected to guarantee not the substance of the dowry but its value.³¹ While this guarantee was probably implicit in some cases, many couples and their families specified in the dotal instrument precisely which of the prospective groom's properties would serve as collateral on the value of their intended bride's dowry, and land was often part of the mix: of the fifteen Girona dotal instruments, eight specifically name at least part of the husband's landed properties as security,³² while three men offered up the whole of their moveable and immovable goods as collateral;³³ only four dotal instruments contain no specific guarantee.³⁴

This system of guarantees was necessary because of the complex nature of property ownership within the medieval household.³⁵ Law codes in the Crown of Aragon assumed a male-headed household in which dotal goods would provide the husband with the extra resources he would need to support a wife.³⁶ Indeed, laws in the Crown of Aragon granted a woman's husband management of her dowry for as long as he lived,³⁷ except under certain conditions such as her husband's catastrophic mismanagement of her property or their marriage's failure due to some provable fault of his.³⁸ On the other hand, the same law

codes asserted that a married woman maintained ownership, if not possession, of her dotal properties: her husband had no power to alienate her goods,³⁹ and the courts might order an embezzling husband to replace the goods that he had squandered with property of equal value from his own estate.⁴⁰

Gender and Legal Assumptions: The Marital Property Regime

We see here a tension in the law codes, which seem caught between an imperative to protect women's property and a tendency to reinforce a gender system in which husbands legally controlled many of their wives' economic resources. Two key legal assumptions underlay this tension. The first was that most secular adult women would be a part of what we might call a "marital property regime," in which the husband would manage the couple's financial resources.⁴¹ While women in the Crown of Aragon were not subject to the rules of coverture that deprived married women in England of the legal ability to administer their own marital property by independently making contracts or suing in court, the economic regime of marriage for women in these Iberian kingdoms was a balance between the independence that came with the retention of legal ownership of their dowry and economic dependence on their husbands, to whom the law granted managerial rights over a woman's dowry and its proceeds. In the best circumstances, a woman might expect to share in financial decision making with her husband. A husband was not, however, legally required to consult with his wife about administration of marital property, and a more unfortunate married woman could find herself in dire financial straits.

This leads us to the second, less obvious underlying assumption surrounding married women and property law: that the husband would exercise his authority responsibly, and for the benefit of the entire household. Particular legal cases in which a husband did not do so illustrate the ways in which women could use to their advantage the assumptions that underpinned the marital property regime, despite the fact that written law seemed to give their husbands near-total control of their assets. Once married, a woman had little independent control over her own property and could face serious financial hardship if her husband turned away from her or even against her. In each of these circumstances—abandonment and abuse—married women were pushed to the margins of the property regime imagined for them in statute law. In the litigation that arose from these cases, we see women actively using

the gender ideas that underpinned marital property law to ensure their own economic stability. The case with which this chapter opened, in which Sibila was suing her husband Pere for financial support after he had abandoned her, illustrates one of the most important avenues of financial recourse that the courts allowed a married woman: the ability to demand the return of her dowry if her husband refused to support her.⁴² Although a husband managed dotal properties along with all the couple's other properties, law codes underlined the fact that the reason that a woman brought a dowry was to contribute to her own support, which the dowry obliged her husband to do, and courts throughout the Crown of Aragon during the early fourteenth century ruled in women's favor time and again if they could prove neglect.⁴³ A lapse in material support effectively constituted a breach of the unwritten agreement between husband and wife; a husband was therefore no longer entitled to the management of property that was supposed to ensure his wife's economic well-being.

Some women who sued their husbands in court found themselves not only without financial resources but homeless as well, as in the case of Jacoba, wife of Andreu Barari, who lodged a complaint in 1328 that her husband had expelled her from the conjugal household near Vic about a year previously.⁴⁴ In other cases, it was the husband who moved out, as in the case of Bernat Moyet, notary of Lleida, whose wife Natalia sued him for financial support in 1324 when he refused to live with her or to treat her with marital affection—including, it seems, his obligation to provide for her financially.⁴⁵ Similarly, two years earlier in the same city, a married woman named Sibila had taken her husband Arnau de Bosco to court because he had refused to live with her or provide her with the material support that she believed she deserved.⁴⁶

The economic hardships of neglected or abandoned wives could be made worse by protracted litigation—a fact that the courts recognized and attempted to remedy. In many instances, as in the opening case between Pere de Sala and Sibila, the court would order the husband to provide decently for the woman in question while the facts of the case were decided.⁴⁷ Sometimes the courts would go further than mandating mere support: when Natalia went to court to petition that her husband Bernat return her dowry, she made it clear that her husband's neglect had left her so poor that she could not pay a lawyer or court costs. In this case, the royal court ordered not only that her husband should provide her with support while the case was being decided, but also that the local authorities should underwrite her legal expenses. The courts further demonstrated an awareness of the financial hardships of protracted

litigation by specifically insisting that her case—like similar cases—be tried using summary procedure.⁴⁸

Another issue that must be taken into account when assessing the economic lives of married women is what happened when a marriage became so intolerable that a woman could not remain in it. For medieval women, as for women in many other times and places, one of the major hazards of trying to escape from an abusive relationship was the economic hardship that such a move could entail.⁴⁹ Women who raised allegations of spousal abuse in the royal courts of the Crown of Aragon were generally not interested in leveling criminal charges against their husbands; nor were they trying to gain a legal separation—an action that would have been the province of the episcopal courts. Rather, their suits were civil actions, aimed at securing financial judgments that would allow them to live separately from their abusive spouses. The royal courts seemed to recognize that, in some situations, a woman's separation from her spouse was necessary and merited court-ordered financial support. Agnès, daughter of Bertrand, was the plaintiff in one such case. Her husband, also named Bertrand, had, apparently without cause, expelled her from the conjugal home in the Catalan town of Canyelles, refusing to provide her and her household (*famille sue*) with food and other necessities. A court might have ordered a husband in this situation to allow his wife to return home and to continue to support her. But Agnès seemed to have decided that returning home was not an option. The court therefore ordered the local royal justice to investigate the situation, and if Agnès's husband was indeed so cruel that she could not continue to live with him, the court should compel him to support her and her household decently in their separate living situation.⁵⁰ In another case from the Catalan region of Urgell, Maria, who complained that her husband Arnau had beaten her severely, was suing not for protection of her person but for the financial support that was owed to her as a wife. The fact that the judgment—in Maria's favor—had been preceded by a previous (and presumably ignored) injunction that her husband support her as was her due, and the fact that one of the options the judgment offered to Arnau was that he return Maria's substantial dowry, suggest that Maria had already separated from her abusive husband and that her main concern was now not her physical safety but her financial security as head of her own household.⁵¹

The most common reason, however, that women sued for restitution of their dowries was neither abuse nor abandonment but a husband's bankruptcy. As noted above, husbands were required to provide collateral from their own property—usually landed property—to guarantee the value of a

wife's dowry, and when the integrity of either the dowry itself or the collateral on it was threatened, wives had cause for a legal action against their husbands. Raymunda, wife of Arnau de Cure, was prompted to appear in the court of the *batlle* of Terrassa when her husband's creditors threatened to encroach on her dotal properties. Arnau had offered a certain *mas*—that is, a semi-isolated country house and the productive land that surrounded it⁵²—as security for a debt he had incurred, but Raymunda protested that the *mas* in question was hers by right of dowry and so could not be encumbered to anyone else.⁵³ In another case from a few years later, the sub-*veguer* in Manresa wrote to Bernat, prior of the abbey of Montserrat, forbidding him to confiscate the home that Guillem de Rausech lived in with his wife Maria because, while the property was Guillem's, he had obligated it to his wife as a guarantee on her dowry. Maria presented the sub-*veguer* with documents substantiating her position, and he had accordingly invalidated the abbey's claim on that particular property.⁵⁴

The phenomenon of wives suing their own husbands for recovery of their dowries is thus an instance in which women were able to exercise a degree of economic autonomy that seems to contradict much statute law and legal theory on women's subordination to male authority. It is also, we should note, not a phenomenon limited to the Crown of Aragon. Historians working on regions throughout the medieval Mediterranean have noted instances of similar legal actions, suggesting that the economic volatility of the commercial economies of the later Middle Ages may have prompted couples to turn to a woman's dotal properties as a shelter against creditors.⁵⁵ This interpretation is bolstered by indications in courtroom documents of the increasing importance of the dower. Appearing in Catalan and Valencian documents as the *escreix* or *creix*, in Aragonese documents as the *firma de dote*, and additionally in some Catalan documents as the *donació propter nupcias* or *augment*, the dower was a gift from the groom and his family to the wife directly.⁵⁶ In the Crown of Aragon at least, the dower seems to have been limited to unions in which the woman had not been previously married.⁵⁷ The dower was usually presented at the time of the wedding, and the fact that laws in many parts of the Crown of Aragon set the minimum amount of the dower at half that of the dowry strongly suggests the two were understood to constitute complementary halves of an exchange.⁵⁸ We should note, however, that while laws in the Crown of Aragon mandated a dower of at least half the value of the dowry, the above-mentioned dotal instruments from fourteenth-century Girona indicate a tendency toward equal matches: fourteen of the fifteen dotal contracts

specify a dowry of exactly the same amount as the dowry,⁵⁹ and in other regions where the dowry had fallen into near-complete disuse, it underwent a sudden resurgence in popularity.⁶⁰

Since husbands were required to guarantee the value of not only the dowry but also any dowry that they agreed to at the time of marriage, we might well wonder why a prospective groom would add to his expenses by providing a dowry twice as high as required by law when he would have to encumber even more of his property to guarantee it. This tendency may be best explained by reference to the benefits of having marital assigns as a financial shelter in volatile economic times; in such circumstances, a larger dowry would mean a larger potential shelter. Indeed, in the Girona group, three of the fifteen grooms represented in the dotal instruments had to encumber all of their moveable and immovable goods to cover the combined value of the marital assigns; eight others offered up substantial landed properties as security.⁶¹ But unlike abandoned or abused women who could base their suits on the assumptions embedded in the law codes of the Crown of Aragon regarding the marital property regime, women who wished to sue their husbands because of impending bankruptcy had to reach back to a much older set of legal assumptions that formed part of the legal culture of the later Middle Ages in the wake of the Roman law revival. These suits show women and their legal counsel actively reinterpreting the powerful gender ideas expressed in one Roman legal concept in particular: the Velleian *senatus consultum*.

Roman Gender Ideas in the Medieval Courtroom

In its original formulation, the Velleian *senatus consultum* (ca. 46 C.E.) stated that a woman could not be compelled to take part in public business transactions, thereby freeing a wife from economic liability for any contracts her husband made without her direct participation, and legally preventing her from having to obligate herself on behalf of another—usually her husband.⁶² The classical Roman jurist Ulpian interpreted this decree to mean that a wife could reclaim her dowry in case of her husband's insolvency,⁶³ and later Roman law reinforced this interpretation, asserting that the wife of an insolvent husband might be given the management of whatever of his goods had been used as security for her dowry, *donatio ante nuptias* (that is, the dowry), and any other goods that she brought to the marriage.⁶⁴ The original rationalization for this decree was that a woman should not be compelled to take part in "masculine"

obligations—including, in this case, responsibility for her husband's debts and the public litigation that might accompany such responsibility. During the period of the early Christian emperors, however, the Velleian *senatus consultum* took on a different gender meaning: not merely was it unseemly for women to be involved in masculine obligations, but the weakness of their sex actually prevented them from doing so competently.⁶⁵ This gendered re-interpretation would be further complicated during the sixth century by a piece of Justinianic legislation, *Si qua mulier*, which declared null and void any wife's intervention in the affairs of her husband, unless she received an advantage⁶⁶—an interpretation that suggests an underlying assumption of a married woman's essential financial vulnerability and lack of economic agency within her marriage, rather than one of inherent matronly modesty or feminine incompetence.

Whether grounded in ideas about female incapacity and modesty or vulnerability and subordination to her husband, the major tension in these laws is one between wives' property rights in marriage on the one hand and the diminished legal capacity of women in general on the other. But the existence of different gender meanings of the restrictions on women acting (or being compelled to act) on their husbands' behalf would leave a complicated legacy to women in the Crown of Aragon when the original *senatus consultum* was reintegrated into local law via the *ius commune*. The revival of the Velleian *senatus consultum* in particular can be traced to the twelfth- and thirteenth-century Mediterranean, when both canonist and civilian jurists affirmed a wife's implied claim on her husband's personal goods equal to the amount of her dowry, trousseau, and dower, along with the general principle that that she was her husband's primary creditor.⁶⁷ In the territories of the Crown of Aragon, the application of this provision of Roman law seems to have been only sporadic, largely due to the fragmented nature of the legal system in that composite monarchy, as outlined in Chapter 1. In the local ordinances, the reception of Roman legal ideas was imperfect at best, although it was less distorted in some of the Catalan laws than it was in other parts of the Crown territories—possibly due to the proximity and influence of legal faculty of Montpellier.⁶⁸ In the law code governing the city and surrounding territory of Tortosa, for example, the Velleian *senatus consultum* appears in the section regulating a wife's responsibilities with regard to her husband's debts. The code gives the woman the right to renounce the privilege, but even then, a creditor was required to liquidate her husband's assets first.⁶⁹ The *Fueros* of Aragon contained a related provision, but Aragonese jurists, in contrast to those of

Catalonia and Valencia, interpreted this Roman legal principle through the lens of local customary practice, with the result that the Velleian *senatus consultum* became a part of the already-extant discourse on a woman's submission to her husband, rather than that of either a woman's matronly modesty or financial vulnerability, and their concomitant need for legal protection.⁷⁰

This discussion of the reception of the Velleian *senatus consultum* in the context of a composite monarchy shows how Roman law could be subject to multiple interpretations, even within a relatively confined geographic area. In some places in the Crown of Aragon, jurists interpreted the *senatus consultum* as a limitation on a woman's ability to make legal contracts of any kind; it was assumed to have originated in a woman's legal submission to her husband, thus implying the nullification of all her legal acts. Most case law, however, favored an interpretation that emphasized a woman's right to financial security for herself and her family.

Women proved willing to use the courts to protect that financial security, even when this entailed acting in the public forum of the law courts in a manner that ran counter to the principles of matronly modesty and feminine incapacity that underpinned the very law these women were using. Statute law from the Crown of Aragon did not prevent women from appearing in court on their own behalf,⁷¹ and the documentary record shows them litigating on their own as well as with representation, suggesting that they had at least a basic knowledge of legal principles that touched on their property rights⁷² and were willing to take advantage of this new interpretation of a centuries-old legal principle and the financial benefits it could entail. A woman's dowry could constitute a significant portion of the conjugal goods, meaning that a large part of the estate could be sequestered from creditors. What was open to debate was the procedural threshold for a woman to recover her dowry. The civil (Roman) law jurist Odofredus (d. 1265) opined that a husband need not actually be insolvent; rather, he simply needed to have entered into debt sufficient to bankrupt him if all his debts were called in, or even to have begun to mismanage his funds in a way that appeared to be leading to financial catastrophe for the household. Another civilian, Bartolus (ca. 1313–57), underlined this interpretation, asserting that a woman could reclaim her dowry even if a husband merely tended toward insolvency.⁷³ This appears to have been the case with Sibila, who lodged a claim with royal officials in Terrassa to sequester her dotal goods from her husband's creditors. But what differentiates Sibila's case from most similar claims is that it was prompted not by the collection of a debt in the present but rather out of a fear that her husband, Pere de Bel'loch,

was *sliding into* poverty in a way that directly endangered her dotal properties. Apparently, her husband had incurred debts in a number of districts, using her dowry as collateral for each one. In 1322, her procurator appeared before the royal officials of Terrassa, bearing letters from royal officials in other districts, all asserting Sibila's rights to her dotal goods.⁷⁴

Sibila's strategy appears to have been preemptive: she was not contesting any particular creditor's claim; she was simply registering with the proper authorities the fact that certain marital properties might not be claimed by creditors in the future. Around the same time, other women were taking similar precautions. In the district of Terrassa, in the years after 1299 when Jaume II ordered his judicial representatives to protect women's dotal properties from their husbands' creditors or from being confiscated if their husbands had committed a crime,⁷⁵ there appears to have been a rash of cases of women asserting their rights to have the goods serving as collateral on their marital assigns sequestered from creditors. In November 1299, a few months after royal officials in Terrassa had received the royal letter affirming the immunity of women's dotal properties, Esclaramunda, wife of Guillem Scuder, appeared personally before the local royal officials, bearing a dotal instrument that proved that her husband had obligated all his goods to guarantee her substantial dowry of 1,800 sous, and requesting that the courts protect the properties in question from any outside claims.⁷⁶ Esclaramunda paid the courts five sous for this document, the same fee that Maria, wife of Ramon de Fontes of Terrassa, paid when she appeared before the local royal court in 1325 or 1326 to settle arguments regarding the goods of her husband. Maria asserted that certain goods that creditors were trying to claim had been previously obligated as security for her dowry, and that her dotal agreement, which obligated all of his goods, was made prior to agreements with any other creditors.⁷⁷

In her legal action, Maria took pains to point out that she had not co-signed any of the debts for which her husband had encumbered these properties.⁷⁸ This was an important point: while a woman could request that the court sequester her goods from her husband's creditors, the courts would deny her claim if she and her husband had incurred the debt jointly. When Jurno de Basanta came to claim a debt of 350 sous owed to him by Bernat Barba of Terrassa and his wife Brunissenda, a full liquidation of Bernat's properties still left the couple 50 sous short, and Jurno insisted that Brunissenda's dotal properties be liquidated as well. Brunissenda appealed to the local royal court in 1316 or 1317 to claim the privilege afforded to her by the revived provisions of the Roman law to shield her dotal property, but the court denied her claim,

finding that, since she and her husband had contracted the debt jointly, her properties, as well as his, were obligated.⁷⁹ We might speculate that, as wives' suits to sequester their dowry became more common, creditors might have attempted to insist that wives cosign their husbands' debts. But even in this situation, the legal assumptions regarding married women and property could still come into play: according to the thirteenth-century Barcelona statutes known as *Recognoverunt proceres*, a woman could be partially liable for joint obligations, but only if she had explicitly renounced her privilege and the husband's goods had been liquidated—and even then, she was only responsible for up to half of his obligations.⁸⁰

One final detail needs to be noted: in all these cases, a married woman was lodging an explicitly adversarial action against her husband; that is, husband and wife did not go together to the courts to claim the husband's bankruptcy and jointly sequester the value of the wife's dowry and dower. Jurists who commented on the marital property regime tended to oppose voluntary property transfers between spouses or even voluntary confessions of insolvency made jointly by the couple.⁸¹ This was probably due to a fear of fraud and collusion between husband and wife, but it had the effect of forcing a married woman to claim an economic autonomy from her husband that may have been at least in part fictive.

All the legal claims discussed in the foregoing pages rested not just on a centuries-old law but also on the gendered legal assumptions that underpinned it. Even laws designed to safeguard a married woman's financial well-being were based on an assumption that women might be vulnerable to their husbands' economic control and thus need special legal protection. Women were economic partners in marriage, but property law for married women was constructed under three basic assumptions: first, that all marital property—his, hers, and theirs—would be under the husband's control, if not always his ownership; second, that a woman had an expectation of financial security within her marriage; and third, that a husband had an obligation to be a prudent administrator of the marital goods. When either of the latter two assumptions broke down, a woman had the right to act in court to preserve her property. But to do so, she was obliged to plead her case within the confines of a gendered legal culture that assumed her economic subordination to her husband. Ironically, only by pleading in terms of this subordination could a woman gain independent control of her own property.

"Poor and Miserable Persons"

The most obvious circumstance leading to a breakdown of the marital property regime was the death of the male head of household. In this case, the surviving woman underwent a transformation in legal and social status as she became a widow. Historians have long portrayed widows as exceptional women who enjoyed extensive legal and economic freedoms relative to those of their married counterparts.⁸² At the same time, however, these widows' medieval contemporaries tended to represent them as some of the most vulnerable members of medieval society. An examination of widows' property litigation suggests that widows' economic vulnerability was in part real, in part rhetorically constructed. Here we see a break in the formerly uniform assumptions about women's legal nature: where married women litigating against insolvent husbands had to represent themselves in court in terms of inherent female vulnerability, widows who used the courts to gain financial independence were required to renounce publicly any resort to claims of vulnerability under the principles of the *ius commune*.

A widow in the later medieval Crown of Aragon could expect to go through a prolonged period between the death of her husband and the receipt of any legacy from the household estate.⁸³ While in this limbo, women were placed in a state of total dependence on men. This dependence accorded well with what was probably the most prevalent legal assumption about widows: that, along with dependents and paupers, widows were "poor and miserable persons"⁸⁴—a category that exercised a powerful hold on medieval legal minds, both ecclesiastical and secular. In canon law circles, the idea that it was the special duty of the church to protect widows had been a part of church doctrine since very early on, but without any coherent objectives or methods until the twelfth century, when canon law became more rationalized and regularized. Stephen of Tournai, one of Gratian's commentators, was the first canonist explicitly to subsume widows into a larger category of *miserabiles personae*. He and other canonists charged bishops with the care of this class of persons, saying it should be their highest priority.⁸⁵ Bishops' obligations included providing widows and other disadvantaged persons with legal counsel and representation and assisting them in defending their interests—duties that became increasingly important beginning in the thirteenth century, as law became too complex for the layman to handle on his or her own.⁸⁶

But widows' cases were heard just as often in secular courts, especially

when it came to property litigation. Johannes Teutonicus, commenting on Gratian, argued that both civil and ecclesiastical courts had a duty to protect disadvantaged persons,⁸⁷ and according to Innocent IV, church courts could only evoke widows' cases when the secular courts' miscarriage of justice was obvious.⁸⁸ In the courts of the crown of Aragon, as in other areas throughout the medieval Mediterranean, secular officials seem to have internalized the canon-law idea of widows' inherent vulnerability, and those officials' own special obligation to protect them.⁸⁹ When Eliscenda Crespine appealed to the king that her own goods not be encumbered for her husband's debts, the king declared himself to be the protector of widows and "miserable persons" in upholding her claim to the *batlle* of Terrassa.⁹⁰ Far from being case-specific, the Crespine verdict was part of a deliberate royal policy, dating back at least to May 1303 when Jaume II, as part of a much longer document concerning the administration of justice, ordered his officials at the local level to hear personally all cases involving widows, children, and other "miserable persons" or to send their representatives out to hear them *in situ*.⁹¹ The king's understanding of the obligations of royal justice could not have been new, for even before he issued this decree, his officials were putting the principle into practice. For example, it was likely in accordance with these principles that Arnau des Mas, sub-*veguer* of Manresa, wrote to Arnau, lord of the castellany of Oló, in March 1303—about ten weeks before Jaume II issued his edict—regarding the accusation that the latter Arnau was holding without cause the woman Bartholomea Çayera, a member of the household of the widow Blanca çes Torres. The sub-*veguer* overrode Arnau's seigneurial jurisdiction within the limits of his castellany, citing his own obligation to defend the rights of widows, and ordering Arnau to release Bartholomea from prison within eight days, or face confiscation of his goods according to the statutes of Peace and Truce.⁹² Although he did not specifically refer to widows as "poor and miserable," we can speculate that this principle underlay the sub-*veguer*'s perception of his own obligations as a representative of the royal authority.

In such cases, widowhood, far from being a life stage characterized by economic independence and social agency, could become a time of extreme dependency or even complete penury. This is not to argue, however, that widows were without resources of their own. In the case of non-aristocratic women, at least, the dowry (if she had one) was not a widow's only asset. She also brought her own labor and skills, which she might use to support herself and her family, just as she had helped to support the conjugal household while her husband was alive. Domestic service was one area of work monopolized by poor

widows throughout the Mediterranean: employers often preferred widows to younger women who might be planning to work only until they had saved up enough money for a dowry. Widows in domestic service might even put off collecting their salary in exchange for either a lump sum upon retirement or a lifetime maintenance allowance after they were too old to work. Women in other employment sectors were, however, much more vulnerable to the vagaries of economic fluctuations.⁹³ Financially self-sufficient widows existed at the other end of the socioeconomic spectrum as well, in a small class of powerful widows who acted as administrators of businesses and patrimonies, sometimes of great importance. But these women's situations tended to proceed not from the Catalano-Aragonese legislation, which itself did little to provide avenues of power for widows, but from specific contractual agreements made at the time of marriage that provided for not just usufruct but outright ownership of marital property upon a husband's death.⁹⁴ We see occasional traces of these arrangements in widows' petitions for acknowledgement of their claims to authority over their husbands' lands, such as the royal confirmation granted in 1313 to Sibila of Rochafort of her authority over her late husband Umberto's tenure over Castellbell.⁹⁵ Such testamentary provisions could even leave widows in positions of public authority: in the Catalan district of Santa Coloma, Saura, widow of Guillem, appeared before the court of the *infante* Jaume in 1309 to complain that the men of the territory under her jurisdiction were refusing to serve in her military levy or to contribute financially to it—both duties owed to her since her husband had died. That women could make claims to such public authority is upheld by the fact that the *infante* wrote to the *veguer* of Ausona and Bages, ordering him to make sure that the men of that place upheld their obligation to Saura, which he noted was an extension of their obligation to the king himself.⁹⁶

The fact that women from such broad-ranging circumstances could all be considered "poor and miserable" comes down to a medieval definition of poverty that was situational, rather than absolute. Medieval authorities attached the label of "poverty" not just to the indigent but also to those who, regardless of their absolute wealth or resources, were unable to support themselves according to their station, or even sometimes to those whose lack of income-generating property meant that they had to earn a daily living by their labor. Widows, whatever their absolute resources, almost inevitably underwent a decline in socioeconomic standing at their husbands' death, a circumstance that led to their being considered "poor widows," even if they did not suffer from poverty as judged by any objective standards.⁹⁷

The role of dependence in the medieval definition of poverty placed widows in an odd position. Dependency was in many ways the expected lot of all women, widows included. On the other hand, widows were also heads of household (even if only temporarily, and even if they constituted a household of one), and thus were expected to be economically self-sufficient; if a head of household came to be economically dependent, that household fell into the category of "poverty." Widows were thus caught between two conflicting sets of cultural expectations: as natural dependents with no one to depend on, they were viewed as among society's most vulnerable persons, no matter what their actual resources. But widows' poverty, unlike the poverty of able-bodied men, could be linked to the powerlessness and inferiority that were part of the legal assumptions about women in general, and widows in particular.⁹⁸ Thus, unlike other types of poverty—say, that of workers or vagrants—the economic vulnerability of widows did not threaten the social order, and may have actually reinforced it.

Gender and Property Strategy

While acknowledging that law and litigation surrounding the property of widows was bound up in assumptions about gender, we might also choose to look at a widow's property interests as serving goals similar to that of her husband's family: to both support the conjugal household in the short term and provide for her offspring in the long term. Certainly in some cases, widows seem to have been caught in the middle of various family interests, and there were times when their pursuit of their own interests placed them at odds with both their husbands' kin and their own. But just as often, we see in widows' litigation the attempt simply to do as their husbands had: to practice good economic management by providing for the short-term support of the household, as well as long-term support of her lineal descendants.

Even if a widow chose to allow her marital assigns to be absorbed into the property of the patriline in exchange for support from and management of the estate while she lived, her economic independence was hardly assured, as she faced financial responsibilities that could potentially bankrupt her. Her first obligation as estate manager was to clear the estate's debts.⁹⁹ Widows might be their husband's universal heirs or (as was more often the case) merely usufructuary managers in the name of a child who had been named heir. Either way, as heads of household, widows, like their husbands before them, had to

be able to make their estates support themselves and their household. When a household was dissolved at the death of its male head, creditors had their last chance to make good on their claims, and a widow had to use the estate to discharge the debts of the old household before she could get down to the business of getting the new one up and running. Documents in which the widows publicly registered their intentions to pay the estates' debts illustrate the variety of financial obligations that a widow might be required to deal with. Some widows might register an all-inclusive willingness to clear the estate's debts, as did Elicenda, widow of Gerald de Rubí of the parish of Sant Pere de Terrassa, who in 1325 or 1326 went before the *batlle* of Terrassa to settle Guillem de Cellario's claim on her late husband's goods. At the same time, she pronounced herself ready to pay any other creditors Gerald might have had, obligating all the goods that the courts would soon recognize as hers to secure what the document refers to as her husband's debts.¹⁰⁰ Other declarations were more specific: Blanca, widow of Francesc Colrat, went before the *batlle* of Terrassa after the death of her husband in 1327 to register her intention to pay off the debts owed by her late husband. Among these debts were a payment of 160 sous of Barcelona owed to Berengaria de Faro, as the balance of a debt that had originally totaled 220 sous, owed jointly by Blanca and her son Guillem Colrat (her husband's universal heir). The estate also owed payment of a dowry valued at 1,500 sous for her daughter Margarita and an annual donation of an unspecified amount for the good of Francesc's soul.¹⁰¹ In still other cases, widows had to deal with litigation arising from old household debts, as in the case of Romia, widow and former business partner of the Moya saffron merchant Pere. The couple had promised Pere Sariera of Manresa 140 sous for a quantity of saffron that they had received from him, but for which they had not yet paid. When the issue came before Romeu Ricolf, sub-*veguer* of Manresa, in March 1313, it was apparently not the first time, and when the widow Romia submitted the case to the sub-*veguer* for final resolution, he liquidated her stock of saffron and all her moveable goods to pay the debt.¹⁰²

In discharging their late husbands' debts, women like these were at least in part protected: as with married women, a widow's dotal properties were insulated from her late husband's creditors.¹⁰³ The sub-*veguer* of Manresa had been able to liquidate Romia's personal goods only because she had previously "renounced her privilege"¹⁰⁴—that is, she had renounced the protection afforded to her dotal goods under the medieval interpretation of the Velleian *senatus consultum*, probably in order to act as cosigner on the saffron debt. Other widows who stepped forward to settle their husbands' debts specifically

reserved their rights under this privilege, as in the case of Guerava, widow of the Girona tavern-keeper Bernat de Molario, who went before the *veguer* of Girona to settle her husband's accounts with Guillem Pere Gironès, a *draper* in the same city. Her action before the *veguer* in July 1325 was not to clear the estate's debts completely but rather to swear an oath to fulfill her husband's obligations in the future, offering as collateral all her goods—with the specific exception of the rights she had in her dowry and dower.¹⁰⁵

As noted above, a married woman was her husband's primary creditor from the moment the conjugal household was formed. As the conjugal household dissolved at the death of its male head, a newly widowed woman's final assertion of her rights as "wife" was an action to sequester her dotal goods (or their equivalent) from the estate accessible to her late husband's creditors. The records occasionally show us glimpses of a well-prepared widow taking preemptive measures, as in the case of Guillema, widow of Ponç de Fornells, who appeared before the *batlle* of Terrassa in December 1330 to register her claims on the estate of her late husband.¹⁰⁶ More often, however, widows appear in the record claiming these rights only in the process of ongoing litigation.¹⁰⁷ Often, the settlements reveal the same gendered logic of property as in those cases involving married women: a husband had no right to encumber his wife's dowry or dower for debts that she had not signed on to; creditors, therefore, could make no claim on those properties, whether the husband was living or dead. In May 1312, the sub-*veguer* of Manresa issued a ruling regarding the possessions of Blanca, widow of Guillem des Prat. Blanca had appeared a month earlier in the sub-*veguer*'s court to lodge a complaint that Berenguer de Prat had placed a lien on part of a *mas* near Gayla that had come into her ownership upon the death of her husband, despite the fact that the land in question had been her dower land and thus could not be encumbered. The sub-*veguer* agreed, ordering Berenguer to desist in his attempts to claim the land and to allow Blanca to till and improve her part of the *mas* in question without further interference.¹⁰⁸ A similar imperative to protect widows' dotal property operated in the litigation between Romia, widow of Pere de Cameles, and her married daughter Guillema on the one hand, and Berenguer de Lliçà, the abbot of the Benedictine monastery of Santa Maria de Serrateix, on the other. Upon Pere's death, the abbot had confiscated the *mas* of Cameles, which he was holding as security for some debts that the late Pere owed his monastery. Romia and her daughter appeared in person with instruments proving that the *mas* in question had been assigned to Guillema at the time of her marriage as a combination inheritance and dowry and that even before that,

the *mas* had been *Romia*'s dowry, in her marriage to Pere. After examining the documentary evidence of the provenance of this land, the *veguer* determined that, since neither of the women had signed the debt, the *mas* could not legally be encumbered. The *veguer* therefore ordered the abbot to release the property and further forbade him or anyone under his supervision to trespass onto the property in question.¹⁰⁹

This latter case shows us more than women using dotal rights to protect their property; it also illustrates how certain property might remain under the ownership of women from one generation to the next without ever being absorbed into the larger estate of the patriline.¹¹⁰ While it is questionable to draw general conclusions from a single example, it may be that what we are seeing in the case involving *Romia*, *Guillema*, and the abbot of Santa Maria de Serrateix is not women's decisions disrupting the patrilineal property strategies but rather trace evidence that women had property strategies of their own that ran parallel to those of the male line.¹¹¹ Furthermore, such strategies and practices could be advantageous to the family as a whole: by giving "women's land" as dowry, a daughter (and, by extension, her spouse) would not have to worry that the property was encumbered by any paternal debts, as property that came from the mother's marital assigns would automatically be immune from the claims of the male head of household's creditors. As with married women's lawsuits against their insolvent husbands, it is impossible to tell from the surviving record whether women's legal actions in these cases actually resulted in independent female control of property or whether they masked a more collaborative strategy involving both husband and wife, planned before the husband's death. But whether these legal actions were on the woman's own initiative or reflected a long-range household strategy, we might have cause to interpret female property strategies not as a subversion of patriarchal practices but as a complement to them. We should also note that the courts upheld the rights of *Romia* and her daughter *Guillema*, suggesting that these parallel property strategies were not regarded as in any way transgressive.

Claiming the Dowry

The cases outlined above illustrate a tension in legal assumptions regarding widows and property: on the one hand, the "poor and miserable" women who existed on the margins of patrimonial strategy; on the other, the active, litigious widows whose property claims had the potential either to destabilize or

reinforce patrilineal property strategies. The clash between these two narrative strands is most evident in the litigation over dowry. For the married woman, the dowry was simultaneously an indicator of a legitimate marriage (as opposed to concubinage), her contribution to the conjugal fund, and a link between herself and her husband's lineage. But for the widow, the dowry could mean much more. She might use it to facilitate entry into another marriage or into the religious life, leave it with the marital estate as a way of "buying in" to her husband's lineage on a permanent basis, or even take it with her to set up independent housekeeping. Whatever her choice, a widow had a legal claim on the ownership and management of her dowry and dower after her husband's death.

Before making good on her claim to her dotal fund, however, a woman had to observe mourning for a year—the so-called *any de plor*. This year was much more than an observance of the niceties; a full year allowed any pregnancies begun before the husband's death to come to term; it also allowed the widow, probably along with the husband's family, time to liquidate enough assets so that the value of her dowry could be paid out. The *Consuetudines* of Girona forbade a childless woman from demanding the return of her dowry during the *annum luctus*,¹¹² and a Valencian woman who remarried during the first year after her husband died forfeited her claim on the dotal property and the *creix*, both of which would go to the first husband's children or, lacking children, to his closest relatives.¹¹³ The *Costums* of Tortosa allowed a widow who remarried within a year and a day after her husband's death to take her dowry with her, but both her dower and any property her late husband willed to her reverted to his heirs.¹¹⁴

At the end of her year of mourning, a widow had a choice: allow her dowry to be absorbed into her late husband's estate, in exchange for the right to enjoy the use of the entire estate during her lifetime, or reclaim the dowry after the *any de plor* and thereby sever any financial connection with her husband's family. In the kingdom of Aragon, the *Fueros* allowed a widow to enjoy the benefits of half of the moveable communal goods, as well as all of her own. This condition ended if a widow (1) claimed her right to take her dotal property out of the family estate, (2) contracted a new marriage, or (3) led a "dishonorable" life after her husband died.¹¹⁵ As for communal goods acquired during the marriage, once the year of her widow's privilege expired, they were divided between the widow and her heirs.¹¹⁶ Similar language can be found in the *Furs* of Valencia: if the heirs of a deceased male head of household disputed his widow's right to reclaim her dotal goods, she entered into a state known as

the *tenuta* or the ability to enjoy the fruits of all her deceased husband's goods for an indefinite time—so long as she did not remarry and led an honest life (that is, if she did not “fornicate or commit adultery”).¹¹⁷ The *Costums* of Lleida also had a similar provision, though they made a distinction between a cash dowry and one in real property:

After her husband's death, a wife should receive support [*victualia*] for a full year from her husband's goods, if her dowry consisted of cash [*pecunia numerata*]. If, however, it [the dowry] was in real property, then immediately upon his death she ought to recover those possessions that were obligated to her for her *sponsalicium*, and nothing other from her husband's goods.¹¹⁸

The terms of a woman's widowhood might variously allow her to remain on and in control of the family estate, to take her dowry into a new marriage, or to retain ownership of half the estate in a *mig-per-mig* marriage, but the potentially destabilizing effect of widows' property decisions meant that their late husbands' kin at times resisted paying out the dowry and worked to keep household resources—especially landed property—out of the hands of widows. A woman in any of these cases might find herself having to resort to legal action to force her late husband's heirs to honor her property rights. This litigation most commonly involved these widows' in-laws, but widows' claims could place them in direct conflict with their own children.¹¹⁹ One such case took place in 1315, involving Sancha, resident of the area near Manresa and widow of Berenguer de Pegeria, a member of the local military elite. In February of that year, King Jaume II wrote to the *veguer* of Ausona on behalf of Sancha, who was in the middle of a legal dispute with her son Guillem and another man, Berenguer of Rajadell, over the possession of the castle of Vinerio and its territories. The king wrote to support Sancha's claim that the castle was hers by right of dowry and dower and went on to state further that, because she was a widow, she enjoyed the special protection of the king. For both these reasons, the king ordered the *veguer* to uphold her rights against the claims of her son and Berenguer.¹²⁰ In another case, Blanca, widow of Albert of Verneto, found herself litigating against her own son, Albertoni, who had been named universal heir of his late father's goods, including the castle of Marmellano. Blanca, however, asserted that her late husband's will had left her usufructuary rights over the castle and the lands that pertained to it for as long as she lived—probably in exchange for not

removing her dower lands from the patrimony—and thus contested her son's right to take over the castle.¹²¹

The stakes were even higher when a widow had minor children, and the number of people with interests in a widow's decision increased accordingly. Assuming guardianship was an arduous task: at this time, all debts of the household had to be settled, legacies for minor children needed to be confirmed, and inheritances for older children and donations outside the family needed to be paid out.¹²² Nevertheless, despite the potentially burdensome nature of the obligation,¹²³ guardianship was, for widows at least, one path to economic self-determination. In general, a husband could name anyone he wished as guardian of his children, and laws in the Crown of Aragon did not prevent women from serving as guardians and/or trustees of the estate. The *Costums* of Tortosa even encouraged the practice, giving the child's mother or grandmother preference over all other possible tutors, except one named in the father's testament.¹²⁴ In fact, in spite of underlying legal assumptions of female incapacity, women were often guardians of their minor children following their husbands' death, and later medieval Catalano-Aragonese writers argued that a widow was the person most likely to take seriously the responsibility for moral guardianship of fatherless children.¹²⁵ In this light, it is unsurprising that judicial authorities may have regarded widows as the natural choice as guardians. In one late thirteenth-century guardianship case noted by Rebecca Winer, the royal court ruled that it was "consonant with reason and the law that in the event of a father's death the mother raise her minor children."¹²⁶ Similarly, when Ramon de Secabechs left his family behind to participate in the expedition to take Sardinia in 1323/24, his father Guillem de Secabechs had been awarded temporary guardianship of his minor children, even though the children's mother, Elicsenda, was still alive. But late in 1329, Elicsenda, now a widow, appeared in the court of the *veguer* of Vilafranca to sue for damages and custody of her children. According to Elicsenda, her father-in-law had been abusing his position as guardian, using money from the estate to support his concubine and their children, even going so far as to dower one of his illegitimate daughters from Elicsenda and Ramon's estate. Presented with evidence of these abuses, the royal court ruled that it was only "fitting" that Ramon's children live with their mother and ordered the *veguer* to enforce this ruling.¹²⁷

How can we reconcile this tendency to appoint female guardians with all the legal assumptions about female incapacity and matronly modesty that prevented them from acting on behalf of others? In the case outlined above, the

veguer's decision in favor of Elicsenda went beyond ideas of what was fitting and reasonable and into more pragmatic financial considerations. An important factor in widows' favor was that they had a vested interest in maintaining their minor children's patrimony, since they were usually living off many of the same resources and could even be their minor children's successors under certain circumstances.¹²⁸ When the financial integrity of the estate was threatened, widow-guardians could be counted on to act, as their own interests coincided with those of their children in ways that those of outside guardians might not. When Mateu of Montefalco, a member of the minor local aristocracy, stripped Romia, widow of Pere de Grenolosa, of the *mas* that was under her control, she went to the court of Guillem Ferrer, substitute sub-*veguer* of Manresa and Bages. In her argument, she made it clear that she was administering the *mas* on behalf of her minor son Berenguer, for whom she was legal guardian. She was, however, also herself living on the *mas* and its proceeds, and thus had a stake in the property's integrity.¹²⁹ Contrast this with another case from Aragon in 1330, in which a guardian from outside the family, Lopez de Molina, illegally bestowed on a foreigner 3,000 sous worth of moveable goods from the estate that had been earmarked for the dowry of his charge Elvira Sanchez de Vinyech, whose marriage had been arranged by her mother Elvira Sanchez de Pomar before she died.¹³⁰ An outsider might be as diligent as a widowed mother, but he might also embezzle from the estates meant to support his wards.

In spite of the risks inherent in appointing an outsider to this responsibility, male heads of household sometimes preferred to name other men, even men outside the immediate family, as guardians for their children, as did the Girona tavern-keeper Bernat de Molario, who in 1325 named Guillem Pere Gironès, *draper* of Girona, as guardian of his children, even though his wife Guerava was still alive,¹³¹ or Ramon de Secabechs, whose widow Elicsenda had to sue her father-in-law Guillem for custody of her own children and management of the family estate, as has been described previously.¹³² Alternatively, a husband might hedge his bets by jointly appointing his wife and another man (often a member of his own lineage) as coguardians: when Elicsenda, widow of Guillem Ferran, appeared before the royal court to accuse Berenguer of Castro Callino of having violently abducted Elicsenda and Guillem's daughter Marquesona, she did so together with Berenguer de Gauver, with the two explicitly acting as coguardians of the girl in question.¹³³ Coguardianship allowed a widow a certain degree of control over the household's economic resources, but always under the assumption that she might not have been fully capable of doing so on her own.

To what degree can a husband's choice to appoint coguardians with his widow, or simply to bypass her entirely, be explained by reference to the particular legal context we have been discussing? One possible explanation is that such decisions were the result of a gendered legal assumption, internalized by the laity, that women would be less capable than men of advocating effectively for their children in court. In the case above, the second stage in Elicsenda de Secabechs's custody battle with her father-in-law took place before the *veguer* of Ausona, to whom the royal letter was delivered. However, this stage was undertaken not by Elicsenda herself but by her procurator in Manresa, Arnau de Puyol, lending credence to the idea that women acting on their own might not get as far in the royal courts.¹³⁴ As noted in Chapter 1, women regularly appointed procurators to act on their behalf. However, representation by a procurator does not seem to have been a hindrance to women in and of itself, as other women could and did appear in their own defense in court and on behalf of any minor children for whom they were guardians.

Underlying these positions—and the position of widows themselves—is a choice between two competing conceptions of the household: one in which the conjugal couple formed the basis for the household, and another that emphasized lineage, specifically the patriline.¹³⁵ Christiane Klapisch-Zuber has argued for Italy that Florentine women were only passing members of any household they were in, lacking roots in the lineage and, by extension, the standing (or even the capacity) to take over the position as a true head of household, even if they did remain attached to their husband's *casa*.¹³⁶ But other historians have suggested that widows might be seen as the natural choice for guardianship of minor children precisely *because* they provided continuity from one generation to the next, and that the role of widow-guardians and maternal kin was “part of a broader societal conception of the family.”¹³⁷ Read in the context of legal ideas about women in general, the truth illustrated by these particular cases likely lies somewhere in the middle. While the litigation analyzed above suggests that women in the Crown of Aragon had a greater chance than their Italian counterparts of exerting their authority as guardians of their minor children and administrators of the family estate,¹³⁸ the law codes themselves suggest that the death of the male head of household marked a shift in the nature of the household itself, and that the female-headed household, in the eyes of both legal authorities and laypeople, was not as “real” as the male-headed household. Law codes contained provisions that specified how guardianship of minor children was to be determined in the event of the father's death, but the death of the mother was never mentioned as requiring any special legal action in terms of guardianship.¹³⁹ To

put it more simply: a father's death affected the continuity of the household in a way that a mother's did not; essentially, the household had to be reconstituted upon the death of its male head.¹⁴⁰

At the time of a husband's death, the nature of the household—especially one with minor children—was negotiable. As in some of the cases analyzed above, women might immediately take over as guardians and administrators, suggesting that they held a central place in the conceptualization of the household in the later medieval Crown of Aragon. But often the records show widows less as independent heads of household than as carefully negotiating a position for themselves with their late husbands' families, who sometimes actively opposed these women's positions as guardians. Blanca, widow of Guillem des Prat, whom we first encountered above litigating against her late husband's creditor Berenguer de Prat, found herself in court again the same year litigating against the guardians and tutors of her son Perico. The suit was led by her late husband's brother Esqueriol, who had ejected her from the *mas* and confiscated her goods in the name of her son, whom Guillem had designated as his universal heir and for whom Esqueriol had evidently been named guardian. Blanca, on the other hand, cited her rights under the *Constitucions* of Catalonia to enjoy half the household estate in perpetuity. So, for the second time in as many months, Blanca found herself lodging a complaint before the sub-*veguer* of Manresa, who in turn wrote to the *batlle* of Gayla, ordering him to follow up on the complaint and to give Esqueriol and the other tutors eight days to substantiate their reasons for ejecting Blanca or to return those lands and possessions to her use.¹⁴¹ Widows in a dotal system were potentially destabilizing because they knew that their property was not tied to their late husband's family; they therefore had no responsibility to the conjugal household, which ceased to exist at the death of the male head and had to be reconstituted, with or without his widow at its head. These widows had the option of taking their property and walking away from their previous lives, with no obligations to family ties or their late husbands' debts.¹⁴² A widow who decided to exercise her right to take the dowry with her would come into conflict with her late husband's family, who would necessarily retain guardianship of the children but lose the dotal capital that would have otherwise helped to support the children and eventually form a part of their inheritance. Similarly, a woman who elected to merge her dowry with the family estate effectively claimed headship of a new household and the concomitant right to administer the estate as she saw fit, even if her decisions ran contrary to the wishes of her late husband's kin.

Widow-guardians, like their male counterparts, did not simply take up guardianship of their minor children; they had to accept the charge formally before the local *veguer* or *batlle*, confirming that they would defend the interests of their young ward and proving that they had the financial resources to support him or her, even if it meant providing a coguardian.¹⁴³ Take, for example, the case of Constança, named as guardian of her minor children and administrator of the family estate in the testament of her late husband Francesc de Ferriol of Barcelona. In 1323, when her husband passed away, she appeared before the *veguer* of Barcelona and Vallès to have her status as guardian confirmed. The early part of the document recording Constança's assumption of her children's guardianship might apply to any guardian of either sex: the *veguer* confirmed Constança's appearance in her husband's testament as named guardian, and Constança, in her turn, formally accepted the position, promising to exercise the duties of that office, always putting the interests of her children first and defending them against anything that could undermine their position. Further, she provided a guarantor, or backup guardian, in the person of her husband's associate Francesc Gruny, at which point the two averred that they, separately and jointly, would protect the property destined for Constança's children.¹⁴⁴

The position of a widow as head of household, however, contradicts a deeper gendered logic that has run throughout the litigation outlined in this chapter: the idea of women's essential vulnerability or incapacity, especially in legal matters. The ceremonies surrounding women's assumption of guardianship illustrate some of the ways in which legal assumptions about women, reminiscent of the earlier provisions of Roman law, hedged their ability, even as widows, to be independent agents: they (unlike their male counterparts or coguardians) were required to swear before the *veguer* that they would not remarry.¹⁴⁵ The assumption here seems to have been that, once remarried, a woman would cede to her new husband her position as head of household, thereby losing the power to safeguard the interests of the children from her first marriage. In the Crown territories, as in other parts of the Mediterranean, a widow's right to enjoy the fruits of the entire estate of her late husband was contingent upon her remaining a part of the late husband's family, caring for the children, spurning remarriage, and (most importantly, perhaps) not diminishing the estate by demanding the return of her dowry.¹⁴⁶

In spite of this legal bar, remarriage of widows seems to have been relatively common in the region: one study of the Crown territory of Rousillon found that one in six dotal instruments concerned a widow,¹⁴⁷ and the actual

proportion of marriages might be higher if one takes into account the many marriages of widows that did not include dowries. Canonists and theologians judged remarriage of widows, while not ideal, to be at least permissible: Bonaventure (1221–74) believed that remarriage of widow/ers was “sacramentally incomplete” but nonetheless valid;¹⁴⁸ Hostiensis (ca. 1190–1271) ruled that even a thousandth marriage would be valid.¹⁴⁹ The economic interests in widows’ remarriages were, however, a matter for secular law, and laws from throughout the Crown of Aragon made clear that widows who remarried could only take out of the marriage the property that they had personally brought into it, leaving all their husbands’ goods and joint marital acquisitions to the children of the union. The *Fueros* of Aragon appear to threaten a widow with children with loss not only of the usufruct of her husband’s goods but also of her own dotal goods if she ever remarried or even had sexual relations with another man after her husband had died,¹⁵⁰ while the Girona *Consuetudines* simply state that a widow could only claim the principal of her dowry if she contracted a second marriage.¹⁵¹ The property disputes that arose from these second marriages could pit mothers against children, as in the case of the children of the deceased Ermengard Andreu, who complained before the royal Audiencia that their mother Sibila and her second husband Ramon were undermining their claim to the lands Sibila had received from her first husband, which in the normal course of events would have devolved to her children.¹⁵²

Oaths sworn before the *veguer* illustrate one further way in which widows who wished to assume guardianship were distanced from assumptions about their natural position in a male-headed household: as part of her assumption of her children’s guardianship, Francesc Ferriol’s widow Constança not only provided a male coguardian; she also explicitly renounced before the *veguer* her benefits under the Velleian senatus consultum.¹⁵³ This renunciation would have been essential to her new position, as guardians might have to represent their children’s interests in court and make decisions on their behalf, as well as make legal decisions regarding the finances of the household more generally. This contradiction (as medieval legal authorities must have seen it) was one of the reasons that early Roman law, so invested in notions of female incapacity and vulnerability, militated against female guardianship of minor children. At the beginning of the third century, Emperor Alexander Severus called guardianship “a man’s burden” and “beyond the weakness of the female sex”;¹⁵⁴ a century later, Constantine argued that women’s role as guardians could imperil matronly modesty, presumably because that role would require them to appear in court to defend the interests of their charges.¹⁵⁵ By the time

of the compilation of the Theodosian Code in 438, however, mothers could serve as guardians of their own children. In order to accede to guardianship, however, they had to fulfill two conditions that male guardians did not: they had to make a declaration before a public official that they would not remarry, on pain of relinquishing their position as guardian, and they had to renounce explicitly their protections under the Velleian *senatus consultum*.¹⁵⁶ The fact that Constança's renunciation of her "privilege" was formal and took place before a royal official underlines the idea that women who assumed guardianship underwent a change in legal status, formally exchanging the legal protections that the law considered appropriate to their sex for the ability to act with the full legal agency that their male counterparts enjoyed as a matter of course.

Cases of widow-guardians in the later medieval Crown of Aragon show women in some ways circumventing some of the more pervasive ideas about female incapacity. However, the law required them to forgo certain protections in exchange, and even so, some cases show that women had to fight hard against their own families and those of their former husbands to take on a public role as heads of household and estate managers. Cécile Béghin-Le Gourriérec has argued for southern France that widows who had to give up guardianship of their children when they remarried would be giving up "an economic role incomparable to that of the married woman, a place at the heart of the family and the urban community that would seem difficult to renounce."¹⁵⁷ On the other hand, we could just as easily read widows' economic agency as perpetually incomplete, as it was always mediated by men, whether an old husband, a new husband, a coguardian, or even the royal officials before whom she had to make concessions that were not required of her male counterparts.¹⁵⁸ Furthermore, her role was to protect the fate of a household and lineage of which she might never be considered a full member. Upon the death of her husband, a widow with minor children had to negotiate a place for herself. Undoubtedly the transition went smoothly more often than not, with all parties understanding what would happen well in advance. But the cases that ended up in court show that widows' "place at the heart of the family" was far from assured. And even when they did attain the status of guardians, the legal concessions they were required to make suggest that the idea of a woman in a position of authority, even at the level of the individual household, troubled the legal categories set out for them. If women were by nature vulnerable or flighty or otherwise incapable of assuming the same social responsibilities as men, then how could that essential nature suddenly change when they became widows? The answer is that it could not. Widows who

would exercise such authority were therefore compelled to renounce large portions of what, for their society, *made* them women: gendered legal protections, and a subordinate role within a male-headed household.

Conclusions

Widows' economic privileges may have been laid out in the various law codes of the later medieval Crown of Aragon, but their ability to claim those privileges could be challenged, and those challenges, begun in the daily interactions between family members and neighbors, formed a critical part of the legal discourse surrounding the status of women. Considering the many factors that could affect a widow's ability to support herself and any children she might have, as well as the various interests that numerous individuals had in keeping widows from fully reclaiming the property they had brought into the marriage, it is little wonder that medieval legal authorities saw widowhood as a time of vulnerability rather than independence. At the same time, however, contemporaries acknowledged widows' potential to be a destabilizing force in matters of family property. In a certain rough sense, women's property litigation bore out both these legal assumptions. On the other hand, women's use of the mechanisms of law to protect their dowry both before and after widowhood shows us a picture of women as neither vulnerable victims nor agents of destabilization but as legal actors developing strategies to preserve the household property in ways that actively engaged with broader legal ideas about women. Authorities may have couched their defenses of these widows in terms of them being "miserable persons," but many of widows' own actions in court seem to contradict this characterization.

Assumptions about women's subordination to male influence colored the economic realities of married women as well, whose husbands were given complete legal control over their wives' property. But at the same time, the law recognized women's continued ownership of that property and their concomitant right not to have it diminished through no fault of their own. The courts were thus caught between two imperatives: protection of naturally vulnerable women on the one hand and preservation of the male-headed household on the other. Both of these imperatives had their roots in legal ideas about women's nature in general: the first sprang from ideas about female vulnerability, the second from ideas of women's inherent incapacity or from a natural modesty that would prevent them from effectively handling the public business of

managing the family economy. Women could take advantage of this tension to mitigate the written law's gendered ideas about property management. To do so in court, however, they had to adopt the vocabulary of the learned law, which in this case meant pleading in terms of the subordinate status of women. In other words, for an individual woman to assert her rights to manage her own property in a way that ran counter to the gender assumptions of written law, a woman had to litigate in terms of the gendered legal category in which the law had placed her.¹⁵⁹

However, while women's property litigation illustrates the common legal assumptions that bound all women together, the simple fact of an assumption of women's inherent vulnerability or incapacity was not the whole story of the interaction between women and law. The property cases in this chapter highlight important differences in how those assumptions were applied, based on a woman's relational status. For a married woman, engaging with Romano-canonical legal assumptions about women as a class was the key to winning more independent control over her own economic life. Widows, on the other hand, had to formally renounce claims to incapacity and vulnerability that were the basis of the protections of the Velleian *senatus consultum* in order to gain the right to act as guardians for their children and administrators of their late husbands' estates. In essence, by renouncing the protections that the law afforded women because of their inherent vulnerability, widows were legally removing themselves from the protected legal category of "woman." Authorities still saw widows as a vulnerable class—they were natural dependents who, as heads of household, had no one to depend on—and both church and state stepped in as replacement protectors for these "poor and miserable persons." But in the case of property law, we see how a woman's legal identity might be situated in two places at once: as part of a unified category to which all women belonged, and as part of subdivided system based on relational status. For a woman to work within these categories, she needed to litigate actively in terms of the legal assumptions that governed them.

This complicated process shows that the relationship between medieval women and the law cannot be reduced to a question of women's oppression by or subversion of gendered legal structures, but must take into account their active use of the conceptual vocabulary that in many ways defined the boundaries of their lives. It also illustrates the complexity of the relationship between women and law. On the one hand, property law could treat women very differently according to their station in life: widows, especially those with minor children, were allowed to administer their own property and that of their late

husbands, albeit subject to certain conditions; married women had to allow their husbands to manage their property, except in extreme circumstances. On the other hand, both married women and widows were also subject to certain legal assumptions about women in general that affected the way that they had to present themselves in order to be successful litigants. As we shall see in the next chapter, the process could at times be circular: the degree to which women, regardless of relational category, were able to adhere to the cultural expectations leveled at women in general in the area of sexual behavior could affect where they were placed on a third matrix of female identity, that of respectable versus disreputable women.

Chapter 3

Crimes of Passion: Sexual Transgression and the Legal Taxonomy of Women

In the previous chapter, we saw how an individual woman's place in the law's relational taxonomy of women (in this case, wife or widow) determined how she would engage with the gendered assumptions concerning female vulnerability and incapacity that permeated the legal culture of the later medieval Crown of Aragon. But a woman's legal identity was also governed by a third factor that transcended both relational status and assumptions about female nature in general. The litigation surrounding the property rights of Agnes Pérez, a widow from the Aragonese town of Barbastro, provides an illustrative example. When Pedro Barbaros died in the late 1320s, Agnes, like many of the widows in the previous chapter, stepped in to assume full responsibility for the household he left behind. Agnes became sole guardian of her daughters and administrator of her late husband's estate on their behalf. Not everyone was satisfied with this arrangement, however: Juana Pérez de Castellret, sister of the late Pedro, went to court to contest Agnes's wardship of her daughters and her administration of the estate. According to Juana, it was widely rumored after Pedro's death that Agnes had committed adultery with another resident of the town and that he had impregnated her; Juana therefore claimed that Agnes was now fraudulently possessing and alienating her daughters' goods.¹

This case, in which a woman's position as guardian and administrator was being contested because of her reputation in the community, is an example of the transformation of social *fama* into legally actionable terms, as described in Chapter 1. The procedural rules of the *ius commune* allowed law courts to consider new types of evidence—including rumor, reputation, and

common knowledge—or to evaluate old types of evidence in new ways. This new approach to evidence strengthened women's position in relation both to the law courts and to their communities in some cases but worked against them in others, as the not-always-disinterested surveillance of relatives and neighbors came into play. The various law codes of the Crown of Aragon laid out women's economic privileges, but an individual woman's ability to claim those privileges could be challenged, and those challenges, begun in the daily interactions of neighbors, formed a critical part of the legal discourse surrounding the status of women.

This chapter approaches the intersection of law, gender, and community reputation by analyzing sexual offenses committed by women belonging to three relational categories: married women, widows, and single women. While the previous chapter showed how women engaged with legal assumptions based on their marital status to exercise personal and financial autonomy, the cases in this chapter illustrate a parallel aspect of women's relationship to legal culture: their relative success in litigation depended not only on their relation to a given man but also upon how well they conformed to expectations for proper behavior within that category.² No matter what their marital status, women were subject to the binary distinction between respectable and disreputable as determined by the interaction of statute law and community perception. In some ways, the treatment of women's sexual offenses reinforced the learned law's categories for women. At the same time, however, an analysis of women based solely on the relational categories set out in the law codes has the potential to mislead.

Adultery Law and Gender Assumptions

Our understanding of adultery as a prosecutable offense must begin with the fundamental question of how it related to both sex and gender (female) and relational category (married). As with much of the law outlined in earlier chapters, later medieval adultery law had its basis in the legal ideas of the *ius commune*. Roman and canon law differed, however, in their interpretation of the relationship between sexuality and gender, leaving a complicated legacy to women in the Crown of Aragon. Roman law tended toward a highly gendered interpretation, firmly linking adultery to biological sex, marital status, and respectability. The emperor Augustus's *Lex Julia de adulteriis coercendis* (18 B.C.E.) uses the terms *adulterium* and *stuprum* (illicit sexual activity or

seduction) interchangeably, but it also frequently refers to the *matrona* or the *materfamilias*,³ suggesting a legal understanding of adultery as illicit sexual activity by or with a married woman of respectable station. Three centuries later, the emperor Constantine continued to link adultery to both marital and social status: women of “base” condition such as prostitutes and barmaids were exempt from prosecution for adultery, but respectable women were held to a high standard of marital fidelity.⁴ Although consideration of the plight of wives of adulterous men did begin to appear in the legislation of the Christian empire,⁵ the male *adulter* of Roman law was a man who had illicit sexual relations with a married woman. Roman law rarely forbade male extramarital sexuality in and of itself⁶ and permitted a wife to repudiate her husband for infidelity only if he brought “immodest women” into his home and had sex with them in his wife’s presence—an occurrence that the law noted “particularly exasperates chaste women.”⁷ Female adultery, on the other hand, remained one of the few reasons for which husbands could legally repudiate their wives, even under the Christian emperors.⁸

Thus, the general effect of Roman legislation was to construct a definition of adultery that centered on the body of the married woman in particular, rather than on issues of marital fidelity in general. This definition of adultery was not, however, uniform throughout the legal literature inherited by law-makers and jurists in the later medieval Crown of Aragon, as Roman law made up only half of the *ius commune*. Canon law, which formed the other half, was considerably more ambivalent about the gendered nature of adultery. Gratian, for one, cited Augustine’s dictum that a fornicator should not be allowed to dismiss his wife on grounds of fornication,⁹ then extrapolated from this and other sources that an adulterous man could not reasonably dismiss his wife on grounds of adultery.¹⁰ Writing shortly after Gratian, Pope Alexander III tried to hold men to a higher standard of marital fidelity, ruling that if a husband had separated from his wife due to her adultery, then subsequently had sexual relations himself with another woman, he should be found as culpable as his wife and should be forced to reconcile with her.¹¹ Thus, while the husband was not himself charged with adultery, his offense was analogous enough to nullify his wife’s adultery as grounds for separation. At one point, Gratian even argued that unfaithful husbands should be punished just as gravely as their female counterparts, not only because their sin was equal but also because men’s inherently greater virtue placed them in a position to serve as an example to women.¹²

Despite the moderating strains of canon law present in the *ius commune*,

however, it is clear that by the later Middle Ages, secular adultery law in the Crown of Aragon had adopted the more gendered Roman-law construction of adultery. Aragonese judges held that, if a man and woman were caught in adultery—that is, either in the act, or alone together in a closed and private room—with two witnesses to substantiate the fact, then each married party had to pay a fine of 60 sous.¹³ The woman, however, was subject to the additional penalty of forfeiture of her dowry.¹⁴ The Code of Tortosa only mentions male infractions in the context of a complaining husband.¹⁵ And although the *Constitucions* of Catalonia permitted a woman accused of adultery to defend herself by judicial ordeal, if she lost her challenge she was delivered into the hands of her husband, who could punish her as he saw fit.¹⁶

In general, a man could face prosecution for adultery in the secular courts of the later medieval Crown of Aragon only if his partner was a married woman. A man's marital status could, however, increase his punishment. According to the *Fuero* of Teruel, both parties to a "double adultery"—that is, extramarital sexual relations between two partners who were each married to other people—could, at least in theory, face burning at the stake.¹⁷ The thirteenth-century Code of Peralada also provided for the possibility of corporal punishment for double adultery: if caught in the act, both parties to the adultery would be obliged to pay a fine to the court and be flogged through the streets.¹⁸ The Code of Tortosa added that both parties should, prior to their public flogging, have their heads shaved and be stripped naked. In this latter case, the public nature of the shaming seems to have been just as important as the physical suffering, as the Code specified that this punishment be carried out during the day and along the longest street in the city.¹⁹ It is unlikely that courts regularly implemented such punishments, as it was common for the royal courts of the Crown of Aragon to commute physical penalties to fines for those who could afford it. Nevertheless, whether corporal punishment, public humiliation, or payment of fines, men were subject to penalty only in certain narrowly defined circumstances, based primarily on the woman's marital status, rather than the man's.

It is also worth noting that while married men rarely faced prosecution in the secular courts for extramarital affairs, their lack of fidelity might be material to the prosecution of other crimes. For example, the royal courts determined in 1315 that the widower Pedro Martín of Catllar was indeed guilty of adultery, in the process of an investigation as to whether he was guilty of strangling his wife Katarina.²⁰ A few years later, this time in Jaca, a married woman named Francisca brought up the extramarital affairs of her husband

Sancho Jiménez in the context of her suit over his mismanagement of her dotal property.²¹ Male infidelity might not normally be a prosecutable offense in the Crown of Aragon, but the fact that a woman could offer it up as evidence of a larger pattern of (prosecutable) marital perfidy suggests that there were some cracks in the otherwise solid foundation of gendered sexuality.

Adultery appears in the law codes of the Crown of Aragon not only as a sex-specific offense but as a gender-specific one as well, in which (in the words of one Aragonese *observancia*) “greater chastity is required of a woman than of a man.”²² Part of the severity of the reaction to women’s adultery, as well as the relative indifference to married men’s infidelities, may be ascribed to purely functional concerns. Law codes regulated married women’s sexuality more strictly than that of married men because an unfaithful wife could introduce illegitimate children into the line of succession. While not explicitly stated in the law codes, this concern over property and inheritance is evident in the litigation surrounding adultery and may serve to explain the involvement of men’s families when a daughter-in-law stood accused of adultery, or the involvement of women’s families when they believed that their daughter had been falsely accused. In these cases, the legal issue was not a criminal charge of adultery but a civil action over rights to inherit property from the marriage. In some cases, the plaintiff might be an adult who claimed that one of his or her siblings was illegitimate and therefore had no right to inherit. Periconi Ribera, son of the late Juan Ribera and resident of the Valencian town of Arés, asserted that Ozenda, Juan’s now-deceased wife, had confessed upon her deathbed that her daughter was in fact not Juan’s child but the daughter of Domingo Piquer. Therefore, Periconi and his sister Granate, both children of their father’s first wife, asserted that neither Ozenda nor her children had any right to any portion of their father’s inheritance, due to Ozenda’s adultery. The children were petitioning the court to confiscate the goods that the supposedly illegitimate siblings had already inherited, in order that they might be redistributed among Ribera’s legitimate offspring.²³

In other cases, the plaintiff might be a husband who did not wish to provide material support for children who were not his biological offspring. When Berenguer Riquer’s wife Sibila and her lover robbed him and fled the city of Valencia, Berenguer was understandably resentful that the children who he insisted were products of his wife’s adultery might have a claim on any of his property. Apparently, the royal officials agreed, advising the *justicia* of Valencia that, if any of these children should sue in court for their inheritance, the *justicia* should first ascertain the facts of their parentage.²⁴ And when Pere,

the king's *batlle* in the Catalan district of Borredà, argued before the royal courts that his wife—another Sibila—was a notorious adulteress, it was in response to an earlier suit by his wife that he support her and their daughter, a child whose legitimacy Pere's lawsuit placed in doubt.²⁵

Property and inheritance were not, however, the only things at stake in an adultery accusation. If a child's irregular parentage was an open secret in the community, it could provoke not only disputes over inheritance but also injury to the honor of the married woman's husband. Male honor in medieval Europe was a complex edifice, built upon varying combinations of political and economic transactions or a man's real or perceived social standing.²⁶ But for married men, for whom being publicly called a cuckold (*coguç*, *cornut*, *banyut*) was one of the most humiliating forms of insult,²⁷ control over their wives' sexuality was always a central component of honor, and their legal actions accordingly emphasize the less tangible harms that their wives' infidelities had caused them. Indeed, historians working with adultery litigation in other parts of the peninsula have argued that this documentary emphasis on male honor, rather than female shame, is a sign that women themselves had no honor of their own, other than that which came to them through their husbands.²⁸ More recently, Georgina Dopico Black has offered a more nuanced interpretation, suggesting that the sacramental transformation of husband and wife into "one flesh," combined with prevailing notions of male superiority, may have inextricably linked a woman's honor with that of her husband, thus rendering adultery a source of particular anxiety for male authorities.²⁹

In these cases, functional concerns of paternity and inheritance appear as subordinate to concerns about an individual man's reputation within the community. One such man, the carpenter Pedro Barbastro, testified before royal officials in Zaragoza that his wife Arnalda, "wickedly violating the faith of marriage," had committed adultery and borne an illegitimate child. Worse, she had not bothered to hide this fact from others, to the great harm and ignominy of her husband, who asked that the courts provide remedy.³⁰ In another case from the Catalan town of Agramunt, the adultery accusation against Guillemona, wife of Arnau Caulera, specified that not only had she violated the law but that she had also caused great damage to her husband's reputation.³¹ And in a similar case initiated by Barcelona resident Jaume de Rey against his adulterous wife Valença, the order for arrest stated that Valença's actions were to Jaume's great detriment, expense, and humiliation³²—the last of these specified harms suggesting that the offense to Jaume's honor was an important element of these crimes.

Honor, however, is not internal to the members of the couple, but is something that can only exist in conjunction with public opinion. In the Valencian town of Alcira, in the wake of the murder of local rake Bernat Gamiça that was first mentioned in Chapter 1, no fewer than thirty-one townspeople, male and female, reported an earlier affair between Gamiça and the unnamed wife of Berenguer Marroquín as common knowledge. Even more telling was the testimony of local notary Bernat Destrayana, who asserted that the widespread exposure of the affair had “destroyed the house of Marroquín.”³³ In this case, Berenguer had left town rather than face the humiliation that had accrued to him and his family, but in other cases, the families of male victims of adultery got involved with prosecuting their adulterous in-laws, likely in an attempt to stake a public claim to the good name of their own families. In a case from the town of Épila, Pedro Garcesí de Rueda and Tode Rodrigo, sons of the late Lupe García de Rueda, complained before royal officials that, while alive, their father had contracted a marriage with Bernarda, daughter of Geraldo de Pamplona, and had treated her with the respect fitting to her position as his wife. She, on the other hand, had (according to the plaintiffs) “wickedly violated the marriage bond” with Pedro Orticií de Barbario, one of Lupe’s own men, and had lived with him publicly as his concubine after Lupe’s death, bearing her new partner a daughter and thereby “offending the memory of her late husband.”³⁴ The critical role that public exposure played in these cases suggests that it was a woman’s public sexual reputation, rather than her behavior *per se*, that affected her husband’s standing in the community.

Adultery and Royal Authority

The cases discussed thus far in this chapter were rarely about adultery alone. Rather, the primary issue was usually either property or violence. But whereas the parties directly involved in adultery cases—women, their husbands, and their families—were concerned with damaged reputations and possible financial repercussions, royal authorities seem to have had other concerns, including the maintenance of order within the judicial and administrative apparatus of the Crown of Aragon.³⁵ The intersection of these two sets of interests could produce a surprising flexibility in the legal definitions of adultery. In one adultery case—one that quickly revealed itself to be something else entirely—from the summer of 1330, royal officials in the city of Zaragoza noted that certain men of that city, ignoring the fact that they were married, were keeping

mistresses in separate locations and treating them as if they were wives, thereby, according to the document, committing adultery.³⁶ The officials asserted that this behavior constituted a maltreatment of the wives, whom the men had dismissed in favor of their concubines or even prostitutes.³⁷ At first glance, this particular application of the term “adultery” seems like a revolutionary move toward a more gender-neutral definition of the offense, one more in line with the egalitarian stance of canon law than with the Roman law that underpinned most Catalano-Aragonese law of adultery. But further reading of the case reveals a deeper governing concern: to protect themselves from the possibility that their wives might sue for recovery of their dowries, some of the men had accused their wives of sorcery and had attempted to prevent the local magistrate from investigating and prosecuting them (that is, the men). It was this obstruction of royal authority that provoked the royal court to initiate a prosecution of the male offenders and to order that no one interfere with the orderly administration of justice; the use of the rhetoric of adultery seems to have been merely a way of emphasizing the perfidy of the offenders.

It is difficult, at best, to determine just how widespread such incidents of corruption might have been, since many may have been successful, leaving no legal record. Still, this case, together with the few surviving records of women who triumphed over false accusations of corrupt officials, gives us some insight into just how explosive a charge of adultery could be. When Lupe de Angelaria, lieutenant *alcaide* of Zaragoza, tried to use the threat of an adultery accusation to blackmail María Maroni for money to pay off his debts, María lodged a complaint, using one part of the legal system (the royal courts) against another (the corrupt judicial official) to defend both her reputation and her financial interests. In María’s case, at least, things worked out in her favor: the royal court ordered that Lupe and his accomplices be tried and punished for their offenses against her.³⁸ But we might also note how the expectation on the part of a corrupt official that a woman would pay a substantial amount of money rather than face even the accusation of adultery demonstrates the legal and cultural resonance of this particular offense.

As noted above, it is impossible to gauge the frequency of official corruption surrounding adultery cases from the few case records that have survived. Two clues, however, suggest that this type of corruption was not uncommon and that adultery was a particularly volatile—and therefore particularly useful—accusation to deploy in the process of prosecuting other offenses. First, the order in a 1327 letter from the royal chancery to prosecute *alcaldes* who sold “licenses” to commit adultery³⁹ suggests that local officials were cashing

in on the infractions of people under their jurisdiction. Second, we might guess at the frequency of official corruption surrounding this issue by noting that laypeople sometimes tried to use the rhetoric of adultery to their benefit in the context of perceived judicial corruption. This seems to be the only way to explain the convoluted litigations that arose in the year 1320 surrounding the marriage of Bernat Viader and his unnamed wife. Bernat's father-in-law Joan de Oblitas had gone to the royal court to accuse Berenguer Ermengaudi, the *justicia* of Morvedre, of certain excesses, including the accusation that the *justicia* had presided over a case that had accused Joan's daughter, Bernat's wife, of having committed adultery with Pere Miedes. It was said that the two had been found together in adultery, and Berenguer had judged them guilty. Joan had countered by accusing the *justicia* of corruption, and the resultant scandal had caused serious damage to Ermengaudi, with regard to both his finances and his reputation. The courts, however, found Joan's counteraccusation to have been as false as he claimed that the one against his daughter had been. The final result of all this litigation was the prosecution of Joan and his accomplices—and presumably a standing guilty verdict for his daughter.⁴⁰

In cases such as this one, we see how a charge of adultery could become an entry point for corrupt officials and laypeople alike to undermine royal justice. In other cases, however, royal authorities themselves used adultery litigation to their own ends, most notably as a wedge to expand jurisdiction into the semi-independent Jewish and Muslim *aljamas* within the Crown territories. In theory, legal cases internal to Jewish and Muslim communities were the province of that community's own court system. Adultery cases fall squarely within this type of dispute, but in reality, Christian courts claimed jurisdiction over many sex cases involving Muslims and Jews.⁴¹ Adultery was a crime for women in both these communities, and the punishments handed down to convicted adulteresses were even more severe than those customary for Christian women convicted of the same crime. According to Jewish law, an adulteress could be condemned to death for her crime. However, in many Jewish communities, including those in the Crown of Aragon, Christian courts were likely to step in and substitute other severe but nonlethal penalties: flogging, shaving of the head (sometimes in the form of crosses), the *escalera* (similar in principle to the stocks), and exile. In addition, the cuckolded husband could unilaterally divorce his wife, who forfeited the financial settlement provided for in her *ketubah*.⁴² In some exceptional cases, a woman might be subjected to a number of these penalties: Doña Lumbré, wife of a powerful member of Zaragoza's Jewish community during the second half of the fourteenth century,

was accused of adultery and was condemned to flogging, cruciform shearing, the *escalera*, and a five-year exile from Zaragoza. The *merino* of Zaragoza not only proved unmoved by her appeal but also managed to block her right to appeal to the king, limiting her instead to a formal protest of the verdict through a Christian notary. The main beneficiary of the process was her husband who, already wishing to separate from his wife, got his wish without forfeiting her dowry and with the agreement that a sum owed to her would go to him. The verdict may have also advanced her husband's position at court, as the trial was no doubt lucrative for the royal treasury.⁴³ In this case, we see how powerful men within the Jewish communities might be able to bring the influence of Christian royal authority to bear on their cases, which in some instances may look like negotiations between two influential men, both of whom stood to gain from the transaction.

Jewish women were not the only religious minorities whose adultery cases could end up before the Christian courts: Muslim women were in some ways even more vulnerable to the manipulation of adultery charges than were their Jewish counterparts. Christian courts claimed jurisdiction over fornication and adultery cases involving Muslims, and usually the king himself or the lord of the place where the alleged adultery took place heard the case, largely because these parties had a stake in the outcome, as the secular courts regularly intervened in Muslim adultery trials to commute the customary penalties of death or flogging to enslavement to the Crown or its agents.⁴⁴ Local magnates might also benefit from this provision, although they could not claim the woman in question as a slave without first obtaining royal permission to do so.⁴⁵ A Muslim woman convicted of adultery might attempt to avoid prosecution by submitting to Christian baptism and paying a fine in exchange for her pardon and release,⁴⁶ but such pardons-for-fee could not be counted on. For Cemçi, a Muslim woman from the Aragonese town of Aranda, baptism was not enough to prevent her from being given in slavery to Esteban de Rueda, the *baile* who had captured her.⁴⁷ In the end, the decision between corporal punishment and perpetual enslavement depended upon an interested local official who wished to intervene, such as when Joan dello Blanco, *arrendatore* of the Muslim *aljama* of Valencia, petitioned to buy out the punishment of the Muslim woman Çasemona, who had been sentenced to 100 lashes for the crime of adultery. With the aid of a local judicial expert, the *infante* determined that Joan was within his rights to do so and ordered Bernat de Nuce, the *baile general* of Valencia, to accept the redemption.⁴⁸

Because of their double vulnerability both as women and as members of

religious minorities, Jewish and Muslim women were easy targets for abuses that were sometimes only rooted out in the course of a larger investigation into broader patterns of official corruption. For example, during an investigation into the official conduct of Bartolomeu, a legal expert in the Catalan town of Vïc, royal assessors discovered that he had had sexual relations with a Jewish woman named Astruga. Upon further questioning, however, Astruga revealed that her encounter with Bartolomeu had actually been rape. As a byproduct of its investigation of one of its own officials, the royal courts legally absolved Astruga of any charges that might be leveled against her as a result and further awarded her 450 sous of Barcelona in compensatory damages (though 50 sous were to remain with the royal chancery to cover costs).⁴⁹ In cases such as these, involving religious minorities in the royal courts, issues of category and proper behavior fade into the background in what seems to be a conversation between men about authority, with women's behavior as incidental, rather than central to the discussion.

Muslim and Jewish women were not immune to the Romano-canonical ideas about married women's sexuality that were central to adultery litigation between Christians. However, the larger concerns of the male litigants mentioned in the previous paragraph tended to distort these categories into near-unrecognizable form. In cases involving Muslim women especially, the term "adultery" took on an extremely flexible meaning that proved dangerous to Muslim women who, even if unmarried, could find themselves threatened with the same penalties as married adulteresses. In 1323 in the town of Orixeta, the Christian Manuel de Entençia captured Çatus, son of Hamet Ardaxex, and Zehora, daughter of Çacti Abengalut, and charged them with adultery. In spite of the fact that neither Çatus nor Zehora was married, the *infante* granted Manuel permission to sell, rent, or ransom them as he wished and to keep the proceeds, specifically citing the *Furs* of Valencia in his decision.⁵⁰ In another case, the *infante* Alfons released the Muslim woman Casina into the custody of the nobleman Ot of Montcada. Casina had been held for an offense the courts had designated as adultery, even though the document describing the incident refers to her as a girl (*puella*), rather than as a married woman.⁵¹

In these cases involving Jewish and Muslim women, the royal courts prosecuted selectively, showing how even seemingly solid categories like "married woman" could be subordinated to larger economic or political concerns. A similar set of concerns seems to govern the prosecution of official corruption cases: the Christian rulers' main interests were in preserving their own authority and expanding it wherever possible. But the volatile legal, social,

and financial nature of a charge of adultery should be noted: the charge was useful in these larger discourses precisely because there was so much at stake for women, their families, and their communities.

Adultery and Community

Code law and court proceedings were not the only ways that married women's sexuality was regulated. As noted in earlier chapters, lay women and men were not passive recipients of "the law" but rather were instrumental in reinforcing and even shaping the legal assumptions surrounding questions of gender. Nowhere is the broad-based participation in the legal culture surrounding married women more evident than in the legal provisions for initiating and proving an accusation of adultery, which depended on community knowledge. The Code of Tortosa depended on the testimony of direct witnesses in cases of adultery, finding grounds for prosecution if reliable witnesses discovered both parties together in bed, or if witnesses saw the man rising from a bed that the woman was in, or vice-versa.⁵² One early fourteenth-century Aragonese *observancia* suggested that, unless the couple was caught *in flagrante delicto*, they should be given the benefit of the doubt: if a man and a woman were denounced as adulterers, the lord of their village should, in the presence of witnesses, give them an official warning that they should avoid each other's company in secluded areas. If, after this warning, they were again found together in a "suspect location," they could be charged with adultery.⁵³ Another *observancia* from the same period maintained that an alert neighbor who observed the couple alone together in a closed room in a home or other suspect location, especially at night, could bring a woman up on charges of adultery.⁵⁴

In the absence of ironclad witness testimony, a woman's general reputation within a community could become part of the legal discourse surrounding the relative propriety of her sexual activity. Variations on this theme show up in testimony from cases in which "witnesses" who had not personally seen or heard the crime in question reported that the accusations were common knowledge. In Chapter 1, we introduced Valentí Golet, whose neighbors testified before royal judicial officials what they "knew or had heard tell" of the rumor that he had murdered his wife Blanquina, and noted that inquisitors were also interested in Blanquina's reputation (*fama*) within the community.⁵⁵ It is interesting to compare this case with another, already touched upon briefly, an extraordinarily well-documented case from the Valencian town of Alcira that,

like the case involving Blanquina and Valentí, began with a married woman's extramarital affair and ended with a murder investigation. In the year 1295 or 1296, on the night before the feast of Saint Catherine, Guillem Garret arose from his wife Geralda's bed before first light, telling her that he needed to do some errands. Geralda remained in bed, where she was joined a short time later by Bernat Gamiça, who entered her room, disrobed down to his tunic and got into bed with her. However, while the two were having sex, Guillem returned home, prompting Bernat to hide beneath the bed when he heard a noise in the rooms below. Bursting into his wife's room, Guillem began feeling around on the bed. Not finding Bernat, he nevertheless cried out, "He's here!" frightening Bernat into scrambling from under the bed, grabbing his cloak, and fleeing the room. Guillem then turned on his wife and stabbed her in the ribs. The injured Geralda fled to the home of Ramon Duruç, whose wife was Geralda's niece. She remained there for a time, but left town when she heard that Bernat had been found murdered.⁵⁶

The following chapter deals with the issue of adultery-related murder in greater depth. Here, we are interested in what the community members knew and what they suspected about Geralda's sexual behavior. While almost all of the witnesses interviewed in the murder investigation had heard that Geralda and Bernat were having an affair, only a couple could lay claim to firsthand knowledge. One of these was Bevinguda, wine-seller and regular visitor to the Garret household, who filled in her own set of details. On the day of the murder, when she arrived with her wares at the Garret household, she observed Guillem Garret emerge from the inner chamber while it was still dark and hide himself behind a screen in the pantry. She soon heard his wife give a signal, at which time Guillem took up a long blade and left the house. Almost immediately thereafter, Bernat Gamiça entered through the main door and asked Bevinguda where the master of the house was. She told him that Guillem had gone to get a weapon, then left the house with it. Bernat then asked her where the mistress of the house was, and when she told him that Geralda was still in bed, he went through the door that led from the cellar into the main quarters, instructing Bevinguda to bolt the door behind him. Bevinguda further testified that Bernat had come by frequently over the course of the preceding six or seven months, each time entering into the inner quarters of the house, and even claimed to have observed him and Geralda lying naked in bed together.⁵⁷

Taken together, these two cases illustrate how community dynamics could work in uncovering a "hidden" offense like adultery, which depended on some

degree of community knowledge about the sex lives of the women who were their neighbors. The role of rumor and common knowledge mirrors the role that publicity played in the destruction of male honor, compounding the offensive nature of adultery but also necessary to prosecuting it.⁵⁸ Knowledge of a woman's sexual behavior was sometimes based on firsthand observation, while at other times it had no specific source. But whether prompted by *fama* or actual witnesses, public knowledge of an ostensibly clandestine act played a critical role in the formation and enforcement of the legal discourse surrounding adultery and of the prosecution of women who participated in adulterous affairs.

Because of the critical role that publicity played, it is unsurprising to find that some women accused of adultery chose to flee town rather than face the consequences, in terms of both legal penalties and reputation within the community. When Guillemona, wife of Ramón d'Alcover, fled the city of Tortosa with her lover, she provided grounds for a bitter court battle between her parents and her husband's brother for possession of her dowry after her husband died.⁵⁹ Starting a new life in a new place could be difficult, and some women resorted to theft to help finance their future. When Sibila, wife of Berenguer Riquer, fled the city of Valencia with her lover Guillem Bercholor, she took with her not only the money that was supposed to be her dowry but also other moveable household goods.⁶⁰ Likewise, Jaume de Rey's wife Valença robbed her husband of a number of items, including a quantity of silver, when she fled the city of Barcelona with the squire Palomí.⁶¹ In cases such as these, there was no civil or criminal action that could force a runaway wife to return to her husband. A husband did, however, have a legal action to recover his stolen goods. Flight may have been suggestive of guilt according to inquisitorial procedure, but it was actually a common legal strategy in the later Middle Ages for criminal cases, where a perpetrator would leave town, wait for things to cool down, then negotiate a settlement from a distance.⁶² Courts appear to have treated adultery differently, however, since perpetrators often fled with the intention of making a complete break with their old lives, rather than returning later to reconcile and resume their place within the community. For this reason, local authorities might take measures to prevent an adulterous woman from becoming a fugitive. When Joan García accused his wife Milia de Lerin of adultery, local authorities in the Valencian town of Sogorb apparently considered her enough of a flight risk that they took the unusual step of imprisoning her pending trial.⁶³

The fact that a woman's natal family had a vested financial interest in

protecting a daughter against accusations of adultery seems to have prompted some family members to get involved in litigation in this area. When Guillem Stephani testified before royal officials in Tortosa that his deceased brother's wife Guillemona had fled town after having committed adultery, his legal quarrel was not with his former sister-in-law but with her mother, as the two battled it out for possession of Guillemona's dowry. Her husband had retained both, as he was entitled to under the *Costums* of Tortosa, but now that he had died, Guillemona's mother was demanding the return of her daughter's marital property.⁶⁴ In this case, the economic motivations are clear, but there is also evidence that some women's families and friends provided aid in ways that bespeak personal concerns, rather than merely financial ones. Valença and the squire Palomí were able to stay ahead of Jaume and the authorities by hiding out with friends, first in the city of Barcelona, then later in other cities in the Crown of Aragon.⁶⁵ When Michel de Manyentos, a resident of Daroca, lodged an adultery complaint against his wife Lorenza and her lover Janyens del Cubelle, he testified that her relatives and friends had aided her in arranging and concealing her illicit meetings.⁶⁶ And in the case of the accused adulteress Milia de Lerin, it was her mother Granata who appeared in court on behalf of her daughter, whom she believed to have been unjustly imprisoned.⁶⁷

In cases where a woman was accused of adultery, her family could be her best line of defense. Even after a daughter had separated from her family of origin, certain ties remained in place, and an accusation of adultery leveled at a woman could threaten both the honor and the finances of her natal family. The foregoing cases strongly suggest that laypeople were not above subverting the law to salvage their own financial and social positions, as well as those of their daughters.

The Widow as Adulteress

Adultery litigation in some ways helps us see more clearly the outlines of the category of "married woman." But these lines become a bit fuzzy when we turn to litigation involving the illicit sexual activities of widows. As noted in the previous chapter, widows, under certain circumstances, might enjoy a degree of economic and personal autonomy that set them apart from the conjugal ideology that dominated gender ideas about women at the time. In cases regarding property, however, they often bought this autonomy at the price of renouncing the paternalistic protections (and restrictions) that the law offered

women because of their supposed vulnerability. In a sense, widows in property cases were drawing a clear line between the legally incomplete status they inhabited as married women and the full legal personhood they would need as widows if they were to claim head-of-household status. But this legal distinction between married women and their widowed sisters did not apply in all areas of life. Widows were still subject to the expectation that they, like married women, would remain sexually respectable—that is, that they would not have sex outside a marriage relationship. In exchange for the combination of respectability and self-government, widows were expected to exercise restraint, or at least discretion, in their personal conduct. According to Catalan law, for a widow to maintain her privileges (that is, the rights to custody and property ownership that men took for granted), she had to live an “honest life.” This was especially important during the first year of widowhood, the so-called *any de plor*, during which a widow could still face prosecution for adultery, even though her husband was already dead.⁶⁸ In the case that opened this chapter, the conflict between Agnes Pérez and her sister-in-law, we see how an accusation of adultery could land a widow in court, fighting against her in-laws for control of the marital property or for wardship of her minor children. The fact that the royal courts seemed to find this particular accusation serious enough to warrant a full investigation and in the meantime ordered that the girls be placed in the custody of their paternal relatives⁶⁹ complicates any assertions we might make about a clear line between legal categories for women based on marital status.⁷⁰

Historians have long treated widows as an exceptional group among medieval women, emphasizing the extent of their legal capacity for self-determination relative to that of their married and single contemporaries. Agnes Pérez’s case to some extent reinforces this picture: she managed the estate of her late husband, apparently without supervision; she had sole wardship of her daughters; she may have chosen a sexual partner to replace her late husband. One could even speculate that Agnes’s decision to embark upon a sexual relationship without benefit of marriage was a strategic move, designed to allow her to enjoy personal and sexual companionship while retaining her economic independence. We should not, however, overstate the exceptional status of widows. In the previous chapter, we noted the economic realities and familial pressures that might constrain widows’ choices with regard to remarriage. Cultural factors might also play a role in a widow’s choices regarding her own sexual conduct. In medieval literature, the “lusty widow” was a figure almost as common as the “unfaithful wife,” and one that underlined a misogynistic

strain in medieval culture that emphasized women's natural lascivious tendencies.⁷¹ In a culture that was all too willing to assume the worst about her, a widow might feel pressure to remarry in order to insulate herself from speculation and gossip. However, doing so would mean sacrificing a great deal of personal autonomy. As noted in the previous chapter, the law permitted a woman to exercise authority within her household as a widow, in which case minor children were under the mother's authority, but if a widow remarried, her children might be released into the custody of blood relatives, if either the children or (if the children were minors) their relatives wished.⁷²

The one factor that seems to be missing from most historical analyses of widows' sexual activity is the desire to enjoy sex or companionship without giving up the economic authority and personal autonomy discussed in the previous chapter. This desire is admittedly difficult to assess from the legal record, but the case of Agnes Pérez suggests that a financially secure widow might choose to take a lover rather than remarry, in order to guard her personal and financial autonomy. A similar case comes from the city of Zaragoza, where the *alcaide* jailed Justa López on charges of adultery after she had been caught in the home of Jaime de Salis, with whom it turned out she was living. The courts released her only when she was able to prove that her husband had died fighting for the Crown in the capture of Sardinia, leaving her widowed.⁷³ Such nonmarital arrangements were not illegal;⁷⁴ they did, however fuel the fires of moralists and writers of *fabliaux* and could damage a woman's reputation within her community.

A widow's unsavory reputation could easily become part of the case against her if she were to find herself in court. In the city of Barcelona, the widow of Ramon Daulí was apparently a neighborhood nuisance. The widow Daulí lived very near to the residence of Joan Vallès, who was himself chamberlain for Archbishop Johannes, patriarch of Alexandria. Joan pleaded with the royal courts that they do something to control his neighbor's behavior, and especially that they prevent her from allowing depraved men who gambled and fought and blasphemed against the Virgin to gather in her home. The courts sided with Joan and ordered the woman in question to improve her behavior or face expulsion from the neighborhood.⁷⁵

In these cases, we are dealing with the legal discourse surrounding widows that took place at the community level: that transformation of social *fama* into legally actionable terms, as described in Chapter 1. The legal relevance of rumor, reputation, and "common knowledge" meant that widows may have enjoyed a certain amount of independence in financial, social, and even sexual

matters, but as subjects, as neighbors, and as women, they were expected to conform to certain standards of behavior, and the liberties that they could take had limits.

Sex, Law, and the Single Woman

While women's historians have expended a great deal of effort exploring the status of widows in the Middle Ages, they have until recently devoted little attention to single women; that is, adult women who had neither been married nor had any immediate arrangements to marry or to enter the religious life, due either to choice or to circumstance.⁷⁶ These women may have had marriage as a goal, but the lack of immediate prospects made it necessary for them to rely either on their families or on their own resources. Although at least one historian has argued that women in the medieval Mediterranean were less likely than their northern European counterparts to live and work independently of a family unit,⁷⁷ this does not actually seem to have been the case for the later medieval Crown of Aragon. Although independent working women may have been trying to save enough money to finance their entry into the married life and although much of women's work was non-wage-earning work within a family unit,⁷⁸ numerous women did work in economically productive occupations outside the home, often either as domestics or in the textile trade.⁷⁹

The real complication with the category of single woman comes with her sexual activity. The legal culture that classified women by relational status—that is, daughters, wives, and widows—could lead to the conflation of sexually active single women with prostitutes: any laywoman who did not fit easily into one of the first three categories might be assumed to belong to the fourth.⁸⁰ This conflation of categories makes the lives of sexually active single women difficult for the historian to discern. Ruth Mazo Karras has argued that single women's noncommercial heterosexual sex activity represented a threat to the marital order and to male control over women and thus had to be incorporated into a larger category of deviance. Medieval treatises on the subject of women include no categories for never-married women who were no longer virgins, other than concubines or prostitutes.⁸¹

On the other hand, there is some evidence to suggest that legal authorities in the later medieval Crown of Aragon recognized a separate category of unmarried women who may have engaged in sexual activity without being

branded prostitutes. Legal petitions requesting legitimization for children born out of wedlock regularly referred to the mothers of these children as *mulieres solutae*—single women.⁸² The use of the term *mulier soluta* is critical here in a strictly legal sense, as it establishes that the woman's offspring had legal standing to petition for legitimacy, as opposed to the illegitimate child of a married woman. If both parents of the child in question had been unmarried laypeople at the time of conception, then the resulting offspring would be considered "natural" children—that is, children of a couple who could have legally married but did not—and would thus be eligible for legitimization.⁸³

These petitions present single women's sexuality as problematic only insofar as it resulted in illegitimate children. Given this fact, we must ask to what degree single women were defined by their sexual behavior. Guido Ruggiero has argued for Renaissance Venice that premarital sexuality, far from being deviant, was part of a normal path toward marriage for nonaristocratic men and women.⁸⁴ Likewise, in a study of sex-related litigation in medieval Bologna, Carol Lansing has noted a disjunction between, on the one hand, court personnel who seem to draw a bright line between "honest women" and "prostitutes," and community members' more nuanced understanding of varied sexual/domestic arrangements between men and women.⁸⁵ Evidence from the Crown of Aragon presents a similar picture, distinguishing between sexually active single women in general and women with bad reputations in particular. The term *mulier soluta* does not seem to have been shorthand for prostitute, as Ruth Karras has argued for the medieval English term "singlewoman."⁸⁶ First, the designation *solutus/a* was not necessarily linked to gendered standards of sexual behavior. While secular court records usually identify single men by occupation or family affiliation, some ecclesiastical records also identify adult males by marital status or lack thereof: documents might identify a single man as *solutus* just as easily as they labeled a single woman *soluta*.⁸⁷ However, in a culture where the married state was the rule among adult women,⁸⁸ the independent single woman did not "fit" and may have constituted enough of a cultural threat to render her an object of suspicion.

Additionally, one may find individual records that recognize a difference between single women's sexual activity and unacceptable promiscuity. One record from the parish of Rochafort refers to Berenguer Segarra's concubine Raymundera as a *mulier soluta*, then goes on to describe the woman na Porta, accused of fornication with a Basque named Nesquival, as both a *mulier soluta* and a *vilis mulier*⁸⁹—the latter term designating the woman in question as "cheap" or "low," apparently differentiating between what the two terms

designated. Court documents seem to apply the term generally to women who were known for their promiscuity, as in the case of a certain *vilis mulier* from the parish of Barbará who resided in Berenguer Laupart's hostel, welcoming in various and sundry men from out of town and apparently having sex with them.⁹⁰ Likewise, the Catalan term *vil* was common epithet in the slanderous insults that women flung at other women, modifying nouns such as *bagassa* or *puta*—insults directly linked to a woman's supposed sexual promiscuity.⁹¹ But many documents also use the term *vilis mulier* to refer to women who may have been commercial prostitutes. The municipal authorities of Zaragoza, for example, appealed to the Crown for help in restraining the activities of the many *viles mulieres* who were disturbing the more morally upright Zaragozans. This same document referred to these same women as *publice mulieres*, indicating a certain conflation in the minds of the authorities of the sexually promiscuous single woman (as opposed to the merely sexually active one) and the commercial prostitute.⁹²

This conflation was neither merely a construct of civic authorities alarmed at the numbers of single women who seemed a threat to the social order nor a part of a larger policy of using the threat of being branded a whore to keep single women in line.⁹³ Municipal authorities may have taken advantage of the overlapping categories, but the origin of this lexical ambiguity lies in canon law, which defined prostitutes in a way that—intentionally or not—encouraged their conflation with sexually active single women in general. The definition of prostitution in Gratian's *Decretum* hinged on an unacceptable level of sexual activity, rather than remuneration: a woman who took many lovers could be classified as a prostitute, even if she took no money for her services.⁹⁴ The thirteenth-century decretist Johannes Teutonicus, like many of his contemporaries, refined Gratian's definition in a way that identified prostitution with *public* sexual promiscuity. He was unclear, however, on exactly how many partners qualified a woman for whoredom: in one place he proposes forty as a minimum number, while in others he suggests that sixty or possibly even 23,000 partners made a woman a whore⁹⁵—the apparent point being that only women who were exceptionally promiscuous by the standards of the day might be assumed to be whores by virtue of their sexual activity alone. Thomas of Chobham, on the other hand, focused not on how many partners a woman had but on the public perception of those partnerships, opining that a woman who engaged in a series of extramarital liaisons should not be considered a whore; rather, she was guilty only of simple fornication. He also dealt with the issue of profit, citing canonical precedent that emphasized the public nature

of a whore's selling of her body.⁹⁶ What these authors have in common is the opinion that promiscuity, not profit, made a prostitute—a distinction further clarified by Odofredus, a thirteenth-century teacher of civil law, who concluded that a woman who confined herself to one or two lovers should not be considered a prostitute, even if her lovers paid her.⁹⁷ Canonists' debates on prostitutes even extended to the question of whether prostitutes' activities were inherently sinful. The author(s) of the *Summa parisiensis* acknowledged that some prostitutes had been forced into the profession and were therefore not morally accountable for their actions.⁹⁸ Other canonists, though, made no excuses for prostitutes' behavior: Johannes Teutonicus opined that, although hunger and poverty might excuse theft, it did not permit a woman to sell her body.⁹⁹

Turning from prescriptive to descriptive legal texts, we should begin by noting that the bulk of case law concerning prostitutes and prostitution would have appeared in municipal courts and statutes rather than in the royal courts. For this reason, most recent studies of prostitution have been local histories or regional studies that combine the municipal records of a number of towns.¹⁰⁰ However, although local studies may yield greater quantities of information, they are also inherently subject to a distorting particularism. The concerns, with regard to prostitution, of port cities like Barcelona or Valencia might be very different from those of an inland city like Zaragoza or a smaller town like Daroca. Likewise, commercial prostitutes in urban areas, who were likely to be immigrants to the city, posed different sets of problems than rural prostitutes, who tended to be local women for whom prostitution was more occasional or adjunct to other work.¹⁰¹ The records of the royal courts, though fewer in number, may afford a broader view of some of the concerns of later medieval society with regard to prostitution. More importantly, they give us a picture of where the prostitute fit into medieval society, not just in a single local context but within a broader cultural scope.

What did medieval legal authorities understand when they used a term that roughly meant "whore"? When they referred to *viles mulieres*, *mulieres publicas*, or even occasionally *meretrices*, were they talking about commercial prostitutes or about women whose sexual promiscuity, whether commercial or not, posed some other sort of threat? Documents of the royal courts do not give a definitive statement linking these women directly to monetary exchange, so it is impossible to say with any certainty whether the women named were, in fact, commercial prostitutes. This, however, may actually matter little. While modern Western law categorizes as prostitutes only those women who

receive payment for their sexual services, we have already seen that medieval law defined prostitutes in a different way, in terms of unacceptable promiscuity. To discover both how the law circumscribed the lives of the women categorized as prostitutes or “whores” and what sort of flexibility these women may have had within this category, we ought not to seek an anachronistic demarcation between the commercial prostitute and the sexually promiscuous woman but rather should abide by the broader medieval category. Whether or not a woman realized material gain in exchange for her sexual services may have affected her immediate circumstances but probably would have mattered considerably less with regard to her place in the community and her standing before the law.

Ruth Mazo Karras has argued that the real problem with women classified as whores was that they did not fit into the medieval gender system. Legal categories for women discussed in the previous two chapters reflect an assumption that all laywomen ought to be associated with some man; this assumption explains why the law treated unmarried women who maintained sexual relations with a single man differently than it treated women who had more numerous partners. Commercial prostitution may have solved a social problem by serving as an acceptable outlet for male sexuality, but it created another one, in that certain women now lived outside the conjugal order with grudging official sanction. Thus, even in a society like England where prostitution was not heavily institutionalized, the existence of the category of “public woman” served the dual function of derogating the socially dangerous sexually independent woman and regulating the socially necessary commercial prostitute.¹⁰² Certainly some documents from the Crown courts suggest a similar currency of the idea of the “public woman” in the Crown of Aragon: the term *mulier publica* was applied to a group of women who were apparently loitering around the precinct of the house of Dominican friars in Zaragoza, “committing many detestable and nefarious acts.”¹⁰³ Likewise, the parishioners of Santa María Majora in the city of Zaragoza complained to the royal courts of the harm caused by the “carnal excesses” of that city’s many *publice mulieres*.¹⁰⁴

The legal concerns about men who patronized prostitutes are further suggestive of the social and legal ambivalence surrounding these women and their sexual conduct. Married men, for example, were not supposed to patronize prostitutes, and licensing regulations in towns with institutionalized brothel prostitution required brothel keepers to exclude married men and clerics. The town’s citizens, however, may have tolerated such behavior in preference to having these men making overtures to respectable wives and daughters¹⁰⁵ or

engaging in homosexual activity.¹⁰⁶ But while secular authorities may have recognized a place for prostitution, that place was strictly delineated: prostitutes served as an acceptable outlet for the passions of young, sexually active, unmarried men,¹⁰⁷ and married men or clergy who transgressed these boundaries seem to have been just as capable of upsetting the social order as were the prostitutes themselves.

We should, however, be cautious about reading these municipal ordinances as a top-down effort to eradicate vice. Certainly, this does not seem to have been the case in the cities and towns in the Crown of Aragon. Most of the cases regarding prostitution that reached the royal courts seem to have originated as private complaints, rather than public offenses. In other words, the royal authorities usually got involved in punishing or restricting prostitutes only when citizens complained. In some cases, the plaintiffs were important townspeople, as in the complaint lodged by Blanca de Calders and her neighbors—all characterized as *prohoms* or leading citizens of Barcelona.¹⁰⁸ In others, the complaining witnesses seem to be ordinary residents: when King Alfons III ordered the *veguer* of Barcelona to expel the prostitutes from the streets of Santa Anna, Canuda, Bot, and Portaferrixa, it was in response to a complaint from the residents of those streets,¹⁰⁹ as was the case with a petition lodged by the residents of the street of Sant Pau.¹¹⁰

The apparent *laissez-faire* attitude on the part of the royal authorities may reflect the lack of an effective means to police prostitutes actively except when citizens complained. However, it is also interesting to note the differences between, on the one hand, the language of the residents' complaints, and on the other, the language coming from the royal authorities. The tenor of actual cases from the royal courts of the Crown of Aragon suggests that at the beginning of the fourteenth century, the general concern about prostitutes was not that they were a morally cancerous element in society but that their presence was linked with crime and civic disorder—in other words, people complained because these women and their associates did not make good neighbors. The whores who frequented the parish of the Blessed María and Saint Joseph in Zaragoza came to the authorities' attention not because of their profession but because parishioners complained about the dangerous element that they introduced into the parish.¹¹¹ Likewise, when sister Agnès, a resident of Barcelona dedicated to the contemplative life, complained to the royal courts about the whores who lived in the street behind the lepers' hospital, it was not because of prostitution *per se*; rather, she complained because the fights and uproar were disrupting prayers and divine offices.¹¹² It bears noting that at

least one citizen complaint seems to have been lodged on grounds of morality rather than nuisance: when Blanca de Calders and her neighbors requested that the prostitutes be expelled from their neighborhood, they did so on the grounds that it was not right for prostitutes to live among honest women.¹¹³ However, the general trend seems to be toward a concern about the criminal element that gathered in areas where prostitutes plied their trade.

Royal authorities also had an interest in eliminating the crime that went along with prostitution. For example, many of the early ordinances of the Valencia bordello zone focused on the prohibition of intermediaries like pimps and *alcabuetas*—both groups associated with violence as well as vice—expelling them whenever possible.¹¹⁴ Men and women who acted as pimps or go-betweens generally aroused more ire than did the prostitutes themselves, and legal authorities leveled correspondingly harsher penalties at them. Cilia, daughter of Ramon Raluça, was driven out of the town of Apiés in Aragon as a result of being found guilty of pimping and of kidnapping Guillemona, daughter of en Carbo, and of taking her out of town to work as a prostitute.¹¹⁵ And when Marieta, a domestic in the household of the *batlle* of Morvedre, was accused of having aided in the abduction and detention of the woman Vanona, she was publicly flogged, then held in prison until the courts later determined that she had been framed.¹¹⁶ Muslim women who acted as go-betweens or procuresses faced even stiffer penalties: witness the case of Jamila, a Muslim woman of Montbui, whose procuring (*lenocinium*) resulted in her being given as a slave to the countess Alamardrana, wife of Juan Martín de Luna, along with another Muslim woman, Marmilla, who had been found guilty of adultery.¹¹⁷ But for commercial prostitutes themselves, such severe punishments seem to have been quite rare in the early fourteenth century. Valencian authorities even showed interest in minimizing the harm done *to* prostitutes, who could easily become victims of rapacity: notices as early as 1328 limit the amounts that brothel-keepers could charge prostitutes for necessities, as well as amount of the debts that brothel-keepers could hold over them.¹¹⁸

These regulations suggest that royal authorities were only peripherally concerned with the sexual behavior of the women in question, an impression reinforced by the apparent lack of interest in banning prostitution outright. Up until the late fifteenth century, Mediterranean towns in general showed themselves reluctant to expel prostitutes entirely, and the few attempts for which there is evidence—Bologna in 1259, Venice in 1266 and 1314, Modena in 1327—seem to have had only short-term effect, at best.¹¹⁹ In general, secular

authorities throughout Western Europe showed little interest in abolishing prostitution, preferring instead to preserve the social benefits it provided while keeping it firmly under control to minimize disturbances. In the eyes of medieval legal authorities and moral commentators, prostitution, in controlled format, was a complement to the public moral order, a way to protect “honest” residents. Thomas of Chobham argued (leaning heavily on Augustine) that, if prostitution were suppressed, greater evils would arise, including murder, homosexuality, and sexual assault.¹²⁰ In the view of medieval authorities, prostitutes decreased the threat to honorable men and women by providing an outlet for the sexual urges of the male populace.¹²¹

In order for a system such as this one to work, however, there needed to be clear boundaries between respectable women and those who were sexually available. Some towns in Western Europe adopted sumptuary laws to provide some of these boundaries, reinforcing the social order by mandating visible signs of social status. Canon law supported sumptuary laws for prostitutes as part of a more generalized legislation aimed at separating pollutant elements (for example, Jews, Muslims, heretics) from more respectable society.¹²² Many municipal statutes in Mediterranean cities required prostitutes to wear distinctive dress, or prohibited them from wearing certain luxury items of clothing or jewelry—presumably to keep them from using the profits of their profession to pass themselves off as honest women.¹²³ Likewise, many municipal statutes from this period prohibited prostitutes from wearing the veil or coif of a respectable woman, and tearing off a married woman’s veil was tantamount to accusing her of prostitution—an offense to feminine honor taken so seriously that at least one Castilian statute punished the action with a fine twice that levied on a physical assault that drew blood.¹²⁴

Sumptuary laws, however, were generally the province of individual municipalities. At the level of the royal courts of the Crown of Aragon, the remedy to the problem of social slippage was to segregate prostitutes physically from respectable women. In Zaragoza in 1330, Alfons III ordered that that city’s *viles mulieres* be restricted to a specific district. Any prostitute found outside the prescribed area faced a fine of twenty sous of Jaca, and those who could not or would not pay would instead be flogged through the streets.¹²⁵ In the city of Valencia, prostitutes were segregated into a designated district beginning in the first half of the fourteenth century, a period that corresponded with the regulatory trends for prostitution throughout medieval Europe. The first Valencian ordinance that mentions the bordello zone dates from 1311, and the first to deal with it directly comes from 1325, referring to a previous royal

privilege establishing a neighborhood where prostitutes had to live, so as to avoid “*diversa scandala et plura inconvenientia*.”¹²⁶

The nature of these *scandala* and *inconvenientia* seems to have been the danger that prostitutes represented to the “good women” that the law and its agents strove to protect, as will be discussed below. Royal authorities seem to have been at least as concerned about this potential slippage between categories as they were about the criminal element surrounding prostitutes. When Alfons III ordered the *veguer* of Barcelona to expel the prostitutes from the street of S. Pau, he condemned them in explicitly moralistic terms as “women who are not ashamed to commit the vilest carnal excesses with their bodies.” More importantly, however, he decreed that their presence damaged the good name of the decent women who lived in those same streets, and that it was not fitting that the one be confused with the other.¹²⁷ Likewise, the king justified his decision to segregate the prostitutes of Zaragoza by saying that their “carnal excesses” and “enormous crimes” made it necessary to separate them from honest residents, since their presence was “prejudicial and damaging to the parishioners.”¹²⁸

The authorities reserved their most moralizing tone, however, for cases that brought prostitutes into contact with the clergy. Although clergymen were one of the groups for whom sexual relations with prostitutes were not tolerated, it seems that prostitutes found a steady clientele around religious foundations. In 1319, the *infante* Jaume noted that many “public women” were apparently hanging around the house of Dominican friars in Zaragoza, committing many “detestable and nefarious acts.”¹²⁹ Likewise, the *infante* was “astounded and horrified” to hear that friars minor of the house of Daroca were sexually involved with prostitutes (*nonnulle mulieres sive meretrices*), to the detriment of the populace. In response, the *infante* ordered the *justicia* of that city to expel all “wicked persons,” including prostitutes, from the vicinity of the house of friars minor and to arrest any who remained and jail them on bread and water for ten consecutive days.¹³⁰ In other cases, the solution seems to have been to confine prostitutes to a specific area of town: in the above case from Zaragoza, the *infante* ordered the *zalmedina* not only to expel the prostitutes from the area around the friars’ community but also to confine them to a segregated district.¹³¹

But whether to protect clergy or honest laywomen, royal authorities appear to have had trouble putting into effect royally mandated restrictions on prostitutes’ movements. A series of royal orders to the *veguer* of Barcelona is instructive in this regard. In June 1333, Alfons III ordered the *veguer* to

expel the *vilissime mulieres* from a neighborhood where the residents had complained.¹³² He had already ordered the same *veguer* to expel these women from the streets of S. Anna, Canuda, Bot, and Portaferrixa one month previously, and at that time had made reference to an even earlier document, dated March 29 of that same year, in which he had ordered the *veguer* to expel such women from the very same streets. But neighbors and authorities had again observed prostitutes there, so the king ordered once again that they be removed within ten days.¹³³

Several authors have pointed out that the twelfth through the sixteenth centuries witnessed a considerable evolution of the place of commercial prostitution in medieval society, from tolerance to institutionalization to active repression,¹³⁴ alongside ongoing attempts to reform prostitutes, either by financing their entry into marriage or founding monastic or semimonastic houses for prostitutes who wished to leave behind a life of sin.¹³⁵ Nevertheless, it is fair to say that throughout this period, secular authorities' main concern was to draw a clear line between whores and respectable women, in an attempt to safeguard the social order. These restrictions, however, met with only limited success during this period. The permeability of the physical boundaries that royal authorities attempted to implement between respectable and disreputable women may have been due to the lack of a consensus among jurists as to where the legal boundary between the two types of woman lay. A reading of the case law, combined with what we already know about the ambiguous vocabulary surrounding sexually active women, suggests that women who had a reputation among their neighbors for sexual promiscuity could face the same legal consequences as commercial prostitutes. For example, when King Alfons III ordered the *veguer* of Barcelona to eject Benvinguda, wife of Arnau de Sanabre and lover of Bernat de Palau, from the stall that Bernat had in the street of the silkworkers, the explicit aim was to prevent her from mixing with the more respectable women—many of them unmarried—who worked there.¹³⁶ Here we see the blurring of boundaries between commercial prostitutes and women who engaged in extramarital sexual activity in general. Commercial prostitutes seem to have represented the thin edge of the wedge of public disturbance that was the primary concern of citizen plaintiffs, but the language of the royal authorities reveals another set of concerns: whores, whether they took money or not, posed a danger to respectable women because their proximity to "honest" women made it difficult or impossible to distinguish between the two.

Thus, with the legal boundaries so imprecisely defined but the stakes so high, a woman's representation of her own sexuality took on great importance,

as the dialogue between learned law and community knowledge combined to reinforce boundaries between groups of women. Leah Lydia Otis has argued that “from the end of the fourteenth century to the sixteenth century, prostitutes would seem to have enjoyed the same legal capacity as honest women.”¹³⁷ This may be true for the prescriptive sources, but case law from the Crown of Aragon gives us a different picture. To return to a case covered in depth in Chapter 1, the single woman María, daughter of Miquel de la Serra, resident of the town of Cabanes d’Arc, complained to royal officials that the *justicia* Bertran Maçquefa, along with three other men, accosted her in a public street one day after church services, publicly denouncing her as a whore and beating her in the street before running her out of town. This public denunciation seems to have served the purpose of marginalizing its victim: several observers corroborated María’s story (or at least that they had heard that it had happened), and one added that no observer or bystander came to her aid.¹³⁸ The fact that women even suspected of being whores could be subjected to brutal treatment in public indicates that in many important ways, both courts and communities understood whores to be different. Their status, in fact, deprived them of a great deal of the legal personality that a respectable woman enjoyed under the law of the Crown of Aragon and according to the principles of the *ius commune*.

In addition to being marginalized socially and physically, whores, whether commercial prostitutes or merely women whom neighbors judged to be unacceptably promiscuous, could be deprived of the property rights that respectable women enjoyed. Practicing prostitutes, according to Gratian, were subject to certain legal disabilities because of the *infamia* that attached to their conduct.¹³⁹ According to Bernard of Parma, prostitutes ought to be barred from accusing others of crimes (a measure that limited the ability of prostitutes to protect themselves from assault). He further asserted that, when charged with a crime, they should not be able to answer in person but should appoint a procurator to present their defense in court, as was the case with fools, lunatics, and others lacking legal capacity.¹⁴⁰ Secular authorities could thus legitimately deprive women categorized as whores of the full protection of law.

One royal mandate issued in 1330 to the municipal council of Barcelona illustrates another of the legal disabilities that prostitutes faced:

In that there exist certain infamous women in the aforesaid city who exercise the libidinous passions of their bodies, the good people who

live in that neighborhood where said women live have attempted to expel them [the women] from the neighborhood, lest they cast a shadow upon the chastity and pure reputation of others. However, this produced no effect, in that the said women asserted that they owned their own homes, from which they argue that they cannot be expelled or ejected. So, because these aforesaid women should not mix with good women, nor have any dealings with them, we therefore state and expressly order that, if some of these women are brought before you councilors, and it is established that they are indeed base and public women, or that such circumstances exist that they ought not be allowed to live in the company of good women, you expel them from their neighborhoods, notwithstanding the fact that they have their own homes in those neighborhoods, because it is permitted that they might rent them out.¹⁴¹

Underpinning this ruling is the idea that even though these women's behavior was not criminal, neither was it completely legitimate, and that it constituted a real danger to women in general. Although prostitutes may have suffered some legal disabilities, the law did not permit confiscation of their property. Even canonists, who may have had the best justification for depriving a prostitute of the profits of her sin, believed that she had a right to her earnings.¹⁴² This would seem to give prostitutes some legal rights with regard to property, but royal authorities got around this problem by insisting that such women could be expelled from their own homes, since they could rent them out to others.¹⁴³ The court's judgment thus deprived the prostitutes in question of the use of their property without depriving them of their rights of ownership—a distinction that indicates the ambivalence in the legal discourse surrounding prostitutes, who were seen as engaging in a legitimate pursuit, albeit a morally and socially noxious one, and one about which community members complained to the courts.

Conclusions

When the legal and moral authorities of the later Middle Ages confronted the issue of prostitution, their problem was really the struggle to delineate a place in society for women who did not fit within the relational taxonomy of women, but whose status was still deemed legitimate, and even necessary.

Nevertheless, litigation in this area reveals “prostitute” to be a category with ill-defined borders that depended more on community opinion than on written law, either of the local codes or the underlying guidelines of the *ius commune*. This same ambiguity applies to a lesser degree to the ostensibly more solid category of married women: while adultery law was concerned with the sexual behavior of a particular legal class of women, cases in which never-married, widowed, or betrothed women were charged with adultery indicates a certain fluidity between groups within the larger category of “woman.”

The previous chapters have already established two ways that the relationship between women and law was constructed: a unifying discourse surrounding biological sex that envisioned all women as naturally weak and incapable, and thus in need of protection from themselves and others, and a second set of categories that regulated the behavior of women in terms of their relation to the men in their lives, whether as wives, widows, or unmarried women. But litigation on women’s sexual behavior shows yet a third matrix of legal identity that women had to negotiate, both in the courts and in their communities. In cases such as these, we see neither a single legal category of “woman” nor a clear division along relational lines but a distinction between respectable and disreputable women. An individual woman’s place within this third set of identities was determined not by the law itself but by public opinion that, because of procedural innovations of the *ius commune*, carried legal weight and could result in legal consequences.

Since sexual reputation, unlike relational status or biological sex, was a part of women’s legal identity that was, at least in part, within their power to control, it is in this arena that we should expect to see women’s greatest level of participation in the shaping of the legal ideas and categories that governed their behavior. However, since the issue at hand was less a woman’s sexual behavior per se than how her neighbors perceived that behavior, women themselves were not the only ones who had a hand in determining this part of their legal identities. But where were the lines between acceptable sexual activity and unacceptable promiscuity drawn? The cases on prostitution illustrate that sexual respectability, while a critical part of a woman’s legal identity, was not an either/or proposition. Rather, it was a continuum with unclear borders. But even if the borders were not clear, the consequences were: a woman whose sexual behavior was judged by her neighbors to be unacceptable could face the loss of full protection of the law, and could find herself subject to segregation, loss of property rights, and even physical violence. Yet medieval legal authorities and moral commentators were hesitant to criminalize the sexual behavior

of these women, whom they saw as performing a socially beneficial function. The legally marginalized whores in this chapter were in some ways similar to the widows in Chapter 2 who renounced their rights to protection under the Velleian *senatus consultum* in order to operate as guardians of their minor children: both represented ways to accommodate socially necessary roles for women on an individual basis without disrupting legal assumptions about women as a class.

Taken as a whole, litigation over women's extramarital sexual activity simultaneously unifies the category of "woman," which the previous chapter showed as fragmented according to marital status, and divides it along new lines. All women, whether married, single, or widowed, were subject to gendered expectations of sexual propriety, but how well women performed this gendered sexuality divided them again, this time into the binary of respectable versus disreputable. The cases concerning matters of property that were the subject of the previous chapter showed women litigating in terms of a legal taxonomy based on marital status, using the conceptual vocabulary of their particular category to plead their cases more effectively. But litigation over female sexuality complicates claims about law as an agent with the power to construct and police the boundaries between different types of women. The learned law of the *ius commune* and the medieval law faculties did delineate categories for women, but these categories intersected with concerns about morality and public order as they played out at the level of both courts and community. The relationship between women and law thus existed at the intersection of three matrices of female identity, combined with a policing of reputation at the community level that shows an awareness of and participation in the legal culture as female litigants used the language of the learned law to engage with a complicated and multilayered set of legal expectations whenever they set foot in a courtroom. As the next chapter will show, the consequences for failure to do so effectively could be quite severe.

Chapter 4

Gender and Violence

At the close of the previous chapter, we mentioned the case of Maria, daughter of Miquel de la Serra, whom the *justicia* of Cabanes d'Arc and his confederates publicly accused of being a whore. Verbal insults of this kind were common in the Middle Ages, and verbal violence directed against women tended to consist chiefly of slurs on their sexual promiscuity.¹ In Maria's case, however, the violence went beyond public insult (which in itself could cause serious damage to a person's reputation²) and into a severe physical beating. Perhaps most horrific to the modern sensibility is the fact that, despite the numerous witnesses to Maria's assault, not a single person came to her aid.³

I have argued that this startling circumstance was due to the fact that Maria's sexual reputation had compromised her legal and social personhood to the point where she could be violently attacked with near impunity. But to what degree, if at all, is Maria's case a reflection of the experience of female victims of violence in general? This chapter argues that violence against women existed at the intersection of law, community reputation, and larger discourses of gender and relational category: while the law afforded women protections against violence that accorded with legal assumptions of female vulnerability, female litigants in these cases had to argue in such a way as to prove they were respectable enough to merit such protections, and by so doing, they helped to solidify gendered legal assumptions about deserving versus undeserving women.

Domestic Abuse

Domestic abuse was one circumstance that prompted women to active use of the legal system. One study of violent crime in the later medieval Crown of Aragon has found that 16 percent of violent acts involving women took place within the immediate family. Of these cases, a woman was the victim 70 percent of the time, and in the great majority of these cases the woman's husband was the perpetrator.⁴ In spite of this fact, law codes from the Crown of Aragon have little to say on the subject of spousal abuse, since the primary venue for domestic violence cases would have been the ecclesiastical courts, where women could sue for separation on grounds of cruelty. Furthermore, legislators may have believed that a certain degree of physical violence within a marriage was to be expected and should be left as a matter for a household's internal governance, rather than for legislation.⁵ Nevertheless, records from the royal courts show that secular judicial officials occasionally encountered cases involving domestic violence, even if the violence itself was not the main object of litigation, and they therefore had to develop legal tools to deal with the issue.

The first thing to note in domestic violence cases is who brought the charges: the assault cases that will be analyzed in this section were variously brought by women themselves, by a procurator on a woman's behalf, or by unspecified parties. In none of the cases, however, did officials prosecute abuse *ex officio* (as, we shall see below, they did in cases involving spousal murder). Perhaps unexpectedly, these cases do not show married women depending on networks of family or friends to bring their cases to court. This absence of family involvement seems odd, especially when considered in light both of findings for other parts of Europe,⁶ and of evidence from the Crown of Aragon for other, nonabuse cases, such as the adultery prosecutions discussed in Chapter 3, that show families involved in the lives of their married daughters. There are several possible reasons for this discrepancy. Families who maintained close ties with their married daughters may have been more likely to make private agreements to control their abusive sons-in-law. Alternatively, women who could draw on family resources may have found litigation either unnecessary or simply more trouble than it was worth, whether in terms of finances or of family honor. It is important to remember that in the fourteenth century, as in the twenty-first, bringing a case to court required the expenditure of considerable time, effort, and financial resources and could readily give rise to both scandal and recrimination, with no guarantee of outcome. In this context,

while neighbors and family may well have been, as Julie Hardwick has argued, the “arbiters of acceptable behavior,”⁷ it is easy to imagine that the group of women most likely to take their abusive husbands to court would be those who truly had no other option.

In these cases, women were suing, not for legal separation, which would have been the province of the ecclesiastical courts, but for financial settlements that would enable them to live independently of abusive husbands. Nevertheless, despite the fact that these were essentially property cases, women’s self-representations in these suits can tell us a great deal about the relationship between gender norms and violence, and about how the legal culture of the later medieval Crown of Aragon affected both. And because the law codes of that time and place had little to say on the subject of spousal violence, we should not be surprised to find jurists leaning on the principles of the *ius commune*, and litigants and their representatives structuring their pleas along those same lines.

The first place to look for legal references to spousal abuse is in the canon law, whose courts governed all but the material aspects of marriage.⁸ Canonists took for granted a wife’s subordinate place in a marriage, but a husband’s dominion over his wife had its limits. While it is true that one canon of Gratian’s *Decretum* cites a ruling from the Second Council of Toledo (527) giving husbands the right to use anything short of deadly force to chastise their wives, this passage referred specifically to wives of clergy.⁹ As Johannes Teutonicus noted in his commentary on this and other passages in the *Decretum*, there was a difference between the clerical wives of Late Antiquity and the lay wives of his day.¹⁰ A husband was within his rights to correct and chastise his wife, but such chastisement should not encompass physical beatings because she was his wife, not his servant.¹¹

Johannes Teutonicus’s interpretation of Gratian is unsurprising, given that he, like the Catalano-Aragonese lawyers and judges who studied his work, would have been reading Gratian through the lens of Roman law, in which the distinction between free and servile status was critical in most areas. For example, a piece of Justinianic legislation known as *Si quis autem* restrained a husband from using weapons or implements to discipline his wife, under penalty of a fine (payable to his wife) equivalent to one-third of the dowry she had brought to the marriage.¹² The explanation for this curb on spousal violence in an otherwise patriarchal society can be found in a slightly older law, from the Code, which granted a wife the right to initiate divorce proceedings against her husband if she could prove that he had beaten her, because blows

were “alien to freeborn persons.”¹³ In other words, to strike a wife would be to treat her like a slave.

Thus, the foundation for what would become the later medieval law of violence rested not just upon legal ideas of gender but also upon the intersection of gender and status. But the status that women in the later medieval Crown of Aragon had to negotiate had less to do with the difference between free and unfree and more with the ability to claim the status and protections due to a woman of a given relational category. In particular, married litigants made use of the *ius commune* idea of *maritalis affectio*, a concept present in both Roman and canon law that meant not only intention to form a permanent, monogamous union, usually with intent to procreate, but also a tie of genuine affection, a kind of continuing consent that remained a crucial constituent of marriage into the Middle Ages.¹⁴ In the hands of a woman seeking a way out of an intolerable marriage, the legal concept of marital affection was a potentially powerful tool, and women alleging spousal abuse made a point of mentioning some factor that would give the court evidence that their marriage was legitimate, thus entitling the women in question to the respectful treatment that one spouse owed another. In June 1330, Maria, daughter of the late Balaguer Breç, was suing her husband Arnau, a member of the local military elite of Urgell. The substance of Maria’s suit was financial, an effort to recover her dowry so she would have the means to support herself independently of the conjugal household. However, the justification for this suit was the abusive nature of her marriage. At this, her second appearance before a royal court (the first had been before the local *batlle*), Maria mentioned that she had provided her husband with a dowry—albeit an unusually small one for a woman of her standing—of 150 sous, thereby establishing her status as legitimate wife (as opposed to a mere concubine) and the concomitant claim to the respectful treatment that spouses owed one another. The king apparently agreed, ordering that she be provided with either a return of her dowry or equivalent value from her husband’s goods and that, in addition, she be awarded damages for the fact that he had violated a cease-and-desist order that the *batlle* had issued at Maria’s previous court appearance.¹⁵ Likewise, Geralda of Castelló de la Plana in Valencia, whose husband Jaume Llorenç had beaten, tormented, and injured her numerous times, found herself in the odd position of first having to argue that Jaume had been a *good* husband before the abuse began: in her plea, Geralda brought up not only the marriage contract she had made with her husband but also the fact that he had, previous to the abuse, “treated her with marital affection according to her station”—behavior that

contrasted sharply with his current abuses and public infidelities.¹⁶ In both cases, women drew on ideas not just about gender but also about their legal standing as married women in particular, which entitled them to a certain standard of treatment.

Once a woman had established her claim on the rights of a married person, she could then access the religious discourse surrounding marriage, strengthening her allegation even further. Since canonists had determined that the quality of *maritalis affectio* proceeded from God, any spouse who failed in his or her obligation to maintain that God-given gift was essentially perpetrating an offense against the divine. There is evidence that litigants may have presented the situation in just this light: Geralda argued that her husband's crimes against her were carried out "without fear of God, in violation of the marital bond,"¹⁷ and Maria represented her husband's maltreatment of her as "contrary to the precepts of God and the law of marriage."¹⁸ While such rhetoric may be the product of legal counsel lurking behind the scenes, rather than the words of the litigants themselves, it is evident that the legal concept of marital affection gave women access to a powerful rhetorical complex regarding the rights of a married person, regardless of sex.

Finally, the way that female litigants presented the details of their cases further suggests that both gender and relational status—that is, a woman's status as legitimately married—came into play when judging whether violence perpetrated against them was legally actionable. Canonists understood that cruelty constituted grounds for separation,¹⁹ but as historians of medieval violence have pointed out, people during the Middle Ages had a different idea than we might of what constituted acceptable levels of or motivations for violent behavior.²⁰ Violence could even be productive rather than destructive, a means of challenging or reinscribing personal and group relations in a social context that tightly controlled and monitored the use of violence to make sure it stayed within agreed-upon bounds.²¹ It certainly seems that some violence was expected as a part of the marriage relationship,²² in spite of canon and Roman law to the contrary. However, the women in these cases were alleging violence that rose to extraordinary levels. The language they or their representatives used reflected that fact, positioning these women firmly on one side of the line that divided spousal "correction" considered reasonable in the context of the lopsided gender relations within marriage from a level of violence that their contemporaries, both in the courts and in the communities, would have considered abusive.

One way of portraying unacceptable violence was to paint a picture of

ongoing or persistent abuse: for example, Geralda, Jaume Llorenç's wife, characterized his abuse of her as "multiplex,"²³ suggesting a pattern of behavior, rather than an isolated incident. Alternatively, a woman might invoke the irredeemable character of the abuser, rather than the severity of the abuse: in Huesca, María, wife of Guadlard de Briva, stated her case in the strongest language possible, referring to her husband's "cruelty" (*sevitia*) and "severity" (*austeritatem*) as reasons why she refused to live with him, because of the danger that he posed to her person.²⁴ María's plea—lodged by a procurator on her behalf—suggests, though does not state, that a certain level of fear could be actionable in such cases. For a woman to invoke her own fear in the face of a violent husband would have been an effective rhetorical strategy, playing as it did into legal notions of inherent female vulnerability. The intangibility of fear, however, made this a complicated strategy to employ. Certainly, the *ius commune* contained provisions for using fear in legal cases, but the threshold of fear was imprecisely and inconsistently defined.²⁵ Roman law regarding the use of fear in property cases specified a high threshold: fear of death or serious bodily harm.²⁶ Canon law, on the other hand, approached women's fear in marriage cases by stipulating that even the threat of violence would suffice.²⁷ In her study of violence litigation in late medieval England, Emma Hawkes has pointed out that the "constant man" standard was used to determine threshold levels of force and fear, but that constant man was a *man*. Due to their inherent defect of reasoning ability, women were not thought capable of determining reasonable violence; thus, the standard by which their emotional reaction to violence was measured was a male standard.²⁸ In other words, women's own experience had little or no place in determining whether their claims about excessive violence were reasonable. Whether a given pattern of spousal battery was sufficient to win a case depended largely upon a woman's ability (or the ability of her procurator) to portray herself as falling into a fairly circumscribed category of victim. A female litigant thus might achieve a better legal outcome by focusing less on the violence itself and more on the nature of the victim, usually along the standard lines of inherent female vulnerability.

Female litigants in abuse cases also had to show that they were not in any way to blame for the abuse. Scholars focusing on other regions have argued persuasively that courts and communities alike tolerated a fairly high level of spousal abuse in two situations: if a woman was a known adulteress or if she was verbally abusive toward her husband; either kind of disruptive female behavior could be seen as ample provocation for violence.²⁹ This discourse

of “justifiable” marital abuse prompted female litigants to emphasize their husbands’ bad character in their courtroom narratives, implicitly suggesting that the woman in question was a blameless victim of irrational violence. One way to accomplish this was to allege material neglect; at least one historian has argued that some courts may have seen economic deprivation itself as a form of domestic cruelty.³⁰ In some cases, the line between material neglect and physical abuse is difficult to discern from the written record. Returning to the case of María and Guadlard, María alleged that her husband was so cruel and severe that she could not live with him. The fact that the court’s main stated concern was that María not be reduced to begging shows that lack of material support featured prominently in the court’s understanding of María’s overall plight.³¹ Likewise, Agnès, of the Catalan town of Canyelles, alleged that her husband Bertrand had, without cause, expelled her from the family home and had refused since then to provide her with the necessities of life. In ordering his judge in Canyelles to make sure that Agnès was provided for, the *infante* referred to the cruelty (*sevitia*) that Agnès had alleged of her husband,³² suggesting that, while the case at hand was one for material support, the subsidiary claim of material neglect was considered an aggravating factor in the primary complaint of physical abuse.

Abused wives may have also brought up their husbands’ infidelities as proof of overall perfidy. Maria, Arnau’s wife, complained that her physically abusive husband consorted with other women,³³ and Geralda, whose husband Jaume Llorenç beat her, charged that he had also publicly taken up with a certain woman named Rameta and committed adultery with her.³⁴ A similar combination of neglect, abuse, and adultery seems to have pushed at least one woman nearly to the breaking point: Guillema de Marsilia, wife of Pedro Arnaldo Besset, complained that her husband, violating the marriage bond, not only beat her but refused to have sex with her, instead publicly keeping not one but *two* concubines. According to Guillema, her husband “led a dissolute life day and night” and refused to live with or even converse with his wife, provoking in her a “murderous hatred.”³⁵ A consideration of male infidelity would not be out of place in the ecclesiastical courts,³⁶ where canon law maintained a sexual equality between spouses. It is, however, a bit more surprising in a secular court, where, as discussed in Chapter 3, the legal definition of adultery centered on the body of a married woman, rather than the violation of the marriage bond in general. However, even though these women’s husbands’ affairs were not criminal, the very fact that a woman would bring them up as material to her legal action against her husband indicates that disapproval of

male infidelity may have served to underline an essential lack of marital affection, thereby bolstering a woman's case.

Infidelity in and of itself may have been detrimental to a married woman's quality of life, but it may have also harmed her in a less tangible way, by damaging her honor. Sociologists and anthropologists have long asserted that historically, especially in Mediterranean cultures, "honor" meant two different things for men and women in a marriage relationship. In his study of honor-culture in Andalusia, Julian Pitt-Rivers asserted that both female and male honor required female sexual purity; a married woman's honor lay in her own chastity, rather than that of her husband.³⁷ However, in the cases involving abused wives, the courts seem to have regarded the damage that unfaithful husbands did to their wives' honor as a harm in itself. In her complaint before the court, Geralda argued that the public nature of her abusive husband Jaume's affair with Rameta caused her "no little injury,"³⁸ and Maria made sure to emphasize that the women with whom her husband Arnau was consorting were "depraved" (*pravis*),³⁹ likely in an attempt to draw a contrast with her own, more honorable station as wife.

Despite the Catalano-Aragonese law codes' silence on spousal battery, the secular courts did recognize and support spouses' expectations that the marriage relationship should be free from fear of undue physical violence. Legal authorities even provided for prophylactic measures against habitually violent spouses, offering the possibility of orders of *segurament*—that is, court orders forbidding a particular person from continuing a pattern of abusive behavior. These orders may have grown out of Peace and Truce ordinances intended to prevent private violence in seigneurial context, but by the fourteenth century, they were being widely used in many regions by men and women from all walks of life and had been extended to include financial as well as physical injuries.⁴⁰ The provisions of these orders could be very specific, as in the 1370 order to a resident of Santa Coloma de Queralt that he "not beat his wife with such force as might kill her or leave her injured for life."⁴¹ Physical violence in violation of such an order increased the punishment levied on offenders, as a deterrent to future misbehavior. But the deterrent effect of these orders could not always be relied upon: in the one case examined in this chapter that featured an order of *segurament*, the only evidence of that order is Maria's follow-up visit to court to protest that her husband Arnau had violated it.

Murder

The existence of the orders of *segurament* indicates that women could and did expect the secular courts to provide, if not complete protection against physical violence at the hands of their husbands, at least a disincentive to continued abuse, and compensation when their husbands refused to comply. The legal sources, however, record instances when protections failed, and violence escalated to outright murder. One study of gender and violence in medieval Catalonia concludes that the majority of uxoricides were committed in violation of an order of *segurament* the courts had issued in the wake of previous—though nonlethal—spousal abuse, suggesting that a large number of murdered wives were victims of escalating campaigns of violence.⁴²

On the other hand, a violent husband could use a woman's own behavior to justify some incidences of violence—even murder—committed against her. In particular, the *ius commune* noted specific circumstances in which a husband or a father might justifiably murder an adulterous woman—the so-called *ius occidendi*—as did the Roman-influenced Visigothic code.⁴³ By the fourteenth century, however, secular laws in the Crown of Aragon had moved away from the harsher punishments of the Visigothic kingdom, which guaranteed complete immunity to a husband who killed his adulterous wife,⁴⁴ and more toward the legislation of Late Antiquity, which compelled husbands to take their wives to court.⁴⁵ The maximum penalty for a woman caught in simple adultery was lifelong house arrest, *not* execution.⁴⁶

Given the canonists' position on the relatively milder crime of domestic battery, it is not surprising that clerical sources inveighed strongly against uxoricide. In the Crown of Aragon, the preacher Francesc Eiximenis's *Llibre de les dones* is the major literary source on adultery and the *ius occidendi* for later medieval Catalonia. Eiximenis did not dispute a husband's right, or even duty, to correct his wife, but suggested that men do so in private, in order that a woman might reform and that scandal might be avoided. He insisted, however, that a husband was never justified in killing his wife, citing a gospel passage about those living by the sword also dying by the sword.⁴⁷ Eiximenis also spoke out against kings who granted pardons to murderous husbands, claiming that those kings themselves were committing a great sin and would not escape the harsh judgment of God: "For he [the king] is not master of justice, but rather its minister, servant, and executor."⁴⁸ Eiximenis cited both divine and natural law to support his position that the punishment should fit

the crime (although without specifying exactly what punishment would “fit” adultery) and railed against husbands and kings who administered punishments to an adulterous wife that were “as great as if she were a heretic or had publicly renounced God.”⁴⁹

Just as some legal sources tacitly accepted a woman’s disorderly behavior as a justification for physical abuse, however, so did female misbehavior—especially sexual misbehavior—appear prominently in cases where husbands murdered their wives. Despite laws and moral theology to the contrary, husbands in the Crown of Aragon continued throughout the later Middle Ages to exercise their perceived right to administer summary justice in cases of their wives’ infidelities. Fourteenth-century Catalano-Aragonese monarchs showed themselves tolerant of these cuckolded husbands’ extreme reactions on a number of occasions, sometimes granting pardons to husbands who had caught their wives and lovers *in flagrante delicto* and had killed one or both of them in a fit of rage, considering these high emotions to be an exculpatory circumstance.⁵⁰ An examination of specific cases suggests that these murders tended to be what are currently referred to as “crimes of passion”—that is, murder or attempted murder committed more or less impulsively in reaction to a specific provocation, in this case coincident with a husband’s catching his wife and her lover in the act of adultery. In a case mentioned in Chapters 1 and 3, when Valentí Golet was accused of having murdered his wife Blanquina in the town of Vilafranca, at least one witness asserted that her husband had killed her because he had discovered her in the act of adultery with Pere Mísser.⁵¹ In another case from 1321, Guillem of Queralt attacked his wife with the intent of killing her, later citing in his own defense the provocation of having walked in on his wife having sex with the local priest.⁵²

A husband might also direct his violent reaction toward his wife’s lover. In the case of Guillem of Queralt, Guillem’s unnamed wife was able to escape with only some serious wounds. The amorous priest, however, was not nearly as fortunate as his married lover: after Guillem’s wife had helped the priest escape out the window, he fled and hid in the oven adjacent to the church, where Guillem of Queralt finally apprehended and killed him.⁵³ And in the case of the murder of Bernat Gamiça discussed in detail in Chapter 3, local rumor had it that Guillem Garret had been driven to murder by the sight of Gamiça caught in the act of adultery with Garret’s wife Geralda. Like Guillem of Queralt, Guillem Garret had turned his anger on both his wife and her lover, and like Queralt, Garret had merely injured his wife but had managed to kill his rival: witnesses found Bernat lying under Geralda’s bed where he

had hidden, bearing about a dozen knife wounds, while Geralda had managed to escape to the home of a nearby relative after her husband had stabbed her in the ribs.⁵⁴

However, like the pardons for uxoricides that Eiximenis deplored, pardons for cuckolded husbands who murdered their rivals were not uncommon. When Bernat Vidal of Sant Gregori, near Girona, was convicted in the death of Berenguer Maestre, the court confiscated his goods, in part to help pay a fine for his crimes. Bernat, however, claimed that Berenguer had been committing adultery with his wife (among other women) and refused to stop when confronted with his offenses. Based on this later information, the royal court absolved Bernat of all criminal and civil charges and ordered the return of his goods, with the exception of the fine he had paid.⁵⁵ Although fines or court fees were often a part of the legal process, we should not read such pardons-for-fee as entirely cynical fundraising attempts by the royal courts. When Pere Borell was absolved of any civil or criminal penalties arising from the accusation that he had killed his neighbor Guillem Bosch, whom he had discovered committing adultery with his wife Margarita, the pardon mentioned neither fine nor fee.⁵⁶ And in February 1326, royal officials issued a safe-conduct for Pere Dalmati of Baeta, who stood accused of murdering Ramón, a clergyman whom many believed to have been carrying on an adulterous affair with Pere's wife. The safe-conduct, like most of its kind, specifically states that the bearer was to remain unmolested, since he had not committed any one of a group of major public crimes, including destruction of public roads, perjury, heresy, sodomy, counterfeiting, or treason.⁵⁷ Murder of a rival apparently did not strike royal officials as equally serious.

This is not to say that royal justice ignored adultery-related murder. When Pere Thorani was accused of killing his wife Esclaramunda, the royal court dispatched Stefano de Roda to investigate and to report back with his findings, indicating some concern to determine the right and wrong of the case. However, in cases in which the victim was shown to have been an adulterous wife, the attitude of the royal officials seems to have been that the husband's actions were not only excusable but might even constitute a public service. In this particular case, Stefano de Roda found that Pere Thorani had indeed murdered his wife, but that he had justified his actions by the fact that she had been carrying on an affair with Pere Bosoni of Cervera. In the final judgment on the case, the royal court found that Thorani deserved clemency, "since we ought to utterly extirpate and eradicate such misdeeds [adultery], which are the repellent to the divine majesty."⁵⁸ Both adultery and uxoricide were

dangers to the public order, but royal authorities here seem to imply that the former posed a greater danger than the latter.

The judicial status of women in the preceding cases might indicate that women's experience of marriage was one in which they were the victims of violence, often without legal recourse. However, women were far from defenseless in a legal sense, and the law, in fact, afforded some protection against spousal violence to women. A look at some of the details of the foregoing cases reveals that there were procedural safeguards in place that attempted to avoid arbitrary violence (at least as judicial officials defined "arbitrary") and to punish abusers, even if those safeguards were sometimes tardy or inadequate by modern standards. The case involving Pere Thorani and his wife Esclaramunda highlights one possible consequence of uxoricide: namely, the forfeiture of territorial sovereignty. As a companion document to his pardon, royal officials issued a notice to the *veguer* of Urgell, ordering that Thorani's castles in Montblanc and Caforça, which he had held by right of dowry, be returned to him at once.⁵⁹ This suggests that, unless adultery was proven, a homicidal husband's property—or at least the property from his late wife's dowry—might be forfeit, and perpetrators of spousal murder, even in cases of adultery, could be subject to exile if they were not able to convince the king to issue a pardon.⁶⁰

However, legal strictures against uxoricide were not always so straightforward. For example, the records documenting Guillem of Queralt's murder of his rival mention a fourth person in addition to the three principals: Guillem of Santa Coloma, who was with Guillem of Queralt when he discovered his wife and the priest. The fact that the case documents mention the perpetrator's companion by name, although he played no apparent role in either the crime or its aftermath, seems even more significant in light of the fact that the names of neither Guillem of Queralt's wife nor her lover are ever mentioned. One way to interpret the relatively prominent appearance of Guillem of Santa Coloma's name in the case documents is that someone involved, either Guillem of Queralt or a royal official, was attempting to highlight the presence of a possible witness. This witness was there to testify not to the murder itself, however, but to the scandalous conduct that had prompted it. Adultery trials in fourteenth-century Catalonia did include the questioning of witnesses, preferably to the act of adultery itself, but often to merely the conduct of the parties involved or even to the reputation of the various parties. In the above-mentioned case from the village of Alcira, in which Guillem Garret stood accused of having attacked his wife Geralda and her lover Bernat Gamiça,

the officials conducting the inquest ranged much further in their inquiries than mere facts of the murder itself, asking witnesses and neighbors about the reputations of all three involved. The picture that emerged was not just of a bloody murder but one of a local rake whose sexual escapades had destroyed at least one other family, a married woman who had been conducting a not-so-secret affair for over half a year, and her husband, who had a generally good reputation, save for the fact that he frequently patronized prostitutes.⁶¹ These details did not bear directly on the murder, but the fact that the testimony of witnesses focused on these details suggests a search not only for motive but also possibly for justification, a determination as to whether the husband's attack might have been provoked.

Neither the Queralt nor the Garret/Gamiça case record bears a verdict, nor is an official pardon appended to either, so we do not know the eventual fate of the parties involved. However, reading these case accounts through the lens of other, similar cases and noting the emphasis that questioners and witnesses placed on a wife's adultery, it is reasonable to assume that female reputation—especially sexual reputation—was an important factor in the adjudication of cases where violence against women escalated to the gravest possible result. The distinction between respectable and disreputable women discussed in the previous chapter thus not only affected a woman's status within society but had the potential to become legally actionable justification for acts of violence against her, even to the point of murder.

Consent and Coercion: *Raptus*

Among all violent offenses against women, rape was probably the most heavily freighted with the discourse of female respectability and legal assumptions about the intersection of sex and violence that surrounded it. One study focusing on medieval and early modern Castile has found that rape cases comprise somewhere between 1.5 and 2 percent of the surviving case records.⁶² This, however, may not have represented the real incidence of the crime, since rapes were likely underreported. As we shall see further below, the ideas about female sexual respectability combined with the high burden of proof that women plaintiffs had to surmount and the existence of alternative methods of settlement to make prosecutions of rape far less common than the crime itself. The fact that much evidence for this crime likely never made it into the courtrooms makes it difficult to say anything about rape in general. However,

the goal of this section, as of this book as a whole, is not to present a definitive history of a particular crime but to show how gendered legal assumptions shaped women's experience. The rape accusations, prosecutions, and pardons that did end up in court illustrate how the multilayered legal culture surrounding women affected women's experience, and how their own litigation reflects their use of this same conceptual vocabulary.

One of the principal reasons that rape is so difficult to see in the records is the ambiguity of the charge itself. The crime that we think of today as "rape"—that is, sex obtained without the free consent of one of the principals—had no distinct legal identity in the later Middle Ages. Rather, it was conceptually linked to two other offenses more clearly defined: seduction (*stuprum*) and abduction (*raptus*). The former could be broadly characterized as illicit sex obtained by subterfuge or trickery (for example, flattery, false promises of marriage, bribery),⁶³ sometimes extending to include an element of intimidation.⁶⁴ In general, however, rape as we understand it found its closest conceptual link in the offense known as *raptus*. Originally a catch-all legal category of "forcible taking," charges of *raptus* applied to persons as well as to property and thus could be used to describe the abduction of young women, often for the purposes of marriage against a parent's consent.⁶⁵ In Roman law of the classical period, individual laws existed to punish forcible sexual contact with the death penalty, but as noted above, *raptus* could also refer to abduction as well as rape. However, Roman law tended to focus on the damage to the household, rather than to the individual victim, and gave the offended party—generally the parent, or the master if the victim was a slave or servant—the option of choosing between financial compensation or criminal damages, suggesting that Roman jurists considered this more of a property crime than one of personal injury. Legislation under the Christian emperors introduced a consideration of the possibility of female complicity, adding laws penalizing women who collaborated in their own abductions and, for the first time, prohibiting marriage between *raptor* and victim.⁶⁶

Many law codes from the Crown of Aragon echoed these Roman legal principles, requiring parental consent as a necessary precondition of a licit marriage, and women who contracted marriage without parental approval could be subject to serious legal disabilities, with disinheritance as the usual legal consequence. Some of these laws were directed at women in particular—for example, the Valencian statute that specified that women could be disinherited if they contracted marriage without paternal consent.⁶⁷ On the other hand, an edict issued by Jaume I in 1269 disregarded the question of sex when

it echoed the Valencian laws in its condemnation of marriage without parental consent, stating that “if any man or woman under the age of twenty-five should take a wife or a husband without the consent of their parents, let them have no share of the inheritance.”⁶⁸ The *Costums* of Tortosa likewise subjected men as well as women to restrictions on freedom of contract when it came to marriage, refusing to recognize the emancipation of offspring who married without parental consent. According to the *Costums*, since children were understood to be in their parents’ power until they were emancipated or until the death of their parents, then children who married without their parents’ consent would remain in their parents’ power, as would any grandchildren.⁶⁹

Yet in spite of the secular law codes’ tendency to support the role of a young woman’s family in choosing a suitable husband and the parental involvement attested to by marriage contracts, Catalano-Aragonese courts upheld the validity of marriages that were actively opposed by a women’s parents. Two cases, from two different parts of the Crown of Aragon, are worth looking at in tandem to illustrate the point. The first comes from the Aragonese town of Puebla de Vallverde near Teruel. In 1325, Miguel Uriano, son of Miguel Soriano, petitioned the royal Audiencia, claiming that he had contracted marriage by exchanging words of present consent (as opposed to consenting to marry sometime in the future) with Sicilia, daughter of Miguel Cortes. However, when the plaintiff went to Sicilia’s father about solemnizing the marriage at the church, her father claimed that the marriage had never been consummated; he therefore refused to honor it. Both secular and ecclesiastical officials had judged the marriage valid, but Cortes, in a final attempt to subvert the match, delivered up his daughter—against her will—as a concubine to Juan Vidal, a butcher in that same town. Miguel Uriano petitioned the royal courts for appropriate remedy.⁷⁰ Only a few years later, a similar case emerged in a different part of the Crown territories, this time in the ecclesiastical court of the bishop of Girona. In late 1330 or early 1331, Francesca, daughter of the late Guillem Bartolomeu, and Bernat Adhemar, both residents of the parish of Castelló, had contracted a marriage by exchanging words of present consent. Unlike Miguel and Sicilia, however, Francesca and Bernat had then taken the extra step of having their marriage blessed in a church ceremony. Francesca’s mother Guillema, however, had opposed the match. Like Sicilia’s father, Francesca’s mother seemed to believe that her daughter’s choice of marriage partner should be subject to parental approval. Therefore, ignoring both the exchange of consent and the ecclesiastical benediction, Guillema attempted to physically prevent her daughter from going to Bernat, thus keeping her

from consummating the marriage or treating her husband with marital affection. Faced with an inability to cohabit with his wife, Bernat appeared before the bishop's court to complain, asking the court to enforce the couple's marriage.⁷¹

Whether taken separately or together, these two cases illustrate the courts' willingness to uphold a couple's decision, in spite of the support that the Roman law-based secular legal codes gave to the will of the parents. In the case of Sicilia and Miguel Uriano, the *infante* ordered the royal justice Domingo Martín de Aladren to investigate the matter, utilizing summary procedure. If Sicilia's father was found guilty of obstructing a legitimate marriage, the justice was to proceed against both him and his property and further to punish him in such a way as to make a public example of him.⁷² Likewise, the bishop's court came down firmly on the side of Francesca and her marriage to Bernat, ordering her mother Guillema to allow her daughter to go to her husband and admonishing her that neither she nor her allies were to hinder the marriage further, under penalty of excommunication.⁷³

These decisions reflect a different conception of marriage than the one imagined in Roman law: rather than public and communitarian, the principle underlying these decisions seems to support a vision of marriage as a fundamentally private act between two individuals, focused on consent of the principals. The key to this apparent break with Roman legal concepts lies in the fact that, along with the Roman law that informed the construction of secular law codes, the secular court judges would have absorbed the principles of canon law as a part of their legal education. The *Decretum* of Gratian, especially the "tractatus de matrimoniis" (*causae* 27–36), illustrates the struggle for balance between the decision-making authority of the family that Roman legislators had endorsed on the one hand, and a fundamentally couple-centered ideal of marriage on the other. Even before Gratian, ecclesiastical authorities had long maintained that marriage was the earthly expression of a preexisting bond ordained by God and ratified by an exchange of mutual consent by two individuals.⁷⁴ Gratian argued that consent made the marriage⁷⁵ and that no woman should be married against her will⁷⁶—positions that, while originally intended to bolster arguments about the primacy of the couple in the formation of marriage, assumed that a young woman had the legal capacity to give or withhold her consent independent of her parents.

This primacy of consent had some unintended consequences, in that consent might masquerade as coercion in a way that suggests that young women were far from helpless pawns in the marital strategies of others. The possibility

that young unmarried women might have been complicit in their own abductions, thereby circumventing parental involvement in choice of marriage partner, was considered a special problem in the case of daughters from the upper ranks of society who rebelled against their families' wishes to make a match more to their own liking. In Calatayud, for example, jurists sought to determine whether force was applied and whether the woman had resisted sufficiently, in order to determine the possibility of her complicity, and thus where to lay blame. If the abduction had been against the woman's will and she wished to return to her parents, her abductor would be treated as a criminal, but if the girl wished to remain with her abductor, it would be she who would face legal sanction.⁷⁷ In Barcelona, the municipal council faced the same problem when it sought in 1219 to "imposar medicina" by declaring that any woman who, without the express consent of her father or mother (or guardian), "allowed herself to be abducted" would enjoy no claim on the family goods. The man involved was condemned to perpetual exile, regardless of whether he took the woman by force or with her consent.⁷⁸ The medicine was obviously not potent enough, as a generation later in 1244, the council reiterated, with similar wording, the disinheritance of women and exile of their lovers.⁷⁹

We should note that both these ordinances, like the Valencian law, were gender-specific: young women in particular were the source of legal and parental anxiety. And although the ordinance was specifically directed toward the *doncellas* and daughters of *probi homines* who would have been the primary concern of the legal elite, it seems likely that similar concerns would have been shared by all parents, worried that their daughters in particular would defy parental wishes. While it is true that laws penalized both men and women for contracting marriages without parental consent, women appear to have been the primary targets in both statute law and actual litigation. We might speculate that, given the underlying gender assumptions discussed in Chapter 1 that characterized women as weak-minded, inconstant, or flighty, restrictions on making legally binding decisions independent of parental authority would fall more heavily upon women than on men. We should also note that in both of the cases analyzed above, the person or persons attempting to prevent the match came from the family of the young woman, while similar cases involving men's parents restricting their choices seem not to exist. Thus, by the later Middle Ages, young women's capacity to give or withhold consent to marriage seems to have been a given. But these cases also suggest that jurists were aware of the possibility of both coerced consent

and fictive coercion, making the crime we think of as rape far from simple to define or prosecute.

The Invention of Rape

Although medieval marriage law in the Crown of Aragon might have supported parental control over children—especially female children—the case law shows that the courts most often based their rulings on the issue of whether a woman had consented to the union. By requiring both parents and the female principal to consent, these laws and cases regarding financial compensation include an acknowledgment of female legal personhood that perfectly straddled the line between the two conceptions of marriage and young women's position halfway between legal object and legal subject. At this intersection, the foundations were laid for separate legal action for what we think of today as rape, even if there was no distinct terminology. But rape as a new subcategory of delict differs in a critical way from broader *raptus* prosecutions for abduction, real or fictive, in that it required the victim to engage with the old gendered legal tropes of female vulnerability, layered over the law's binary distinction between respectable and disreputable women.

In Roman law, *raptus* was a general term denoting “carrying off by force” and could be used to describe forcible theft of property as well as abduction. It was not until the sixth-century reign of the Emperor Justinian that *raptus* was conceived of as a crime against women, rather than a property crime against their husbands or fathers.⁸⁰ Medieval canon law, beginning with Gratian, picked up the issue again, recategorizing *raptus* with crimes against persons, rather than with property crimes, defining *raptus* in two ways: as either abduction of a girl without parental consent (with or without her complicity) or forcible intercourse against her will.⁸¹ The first crime might be compared with the modern practice of elopement, if the woman consented, while we might characterize the second as rape, a crime of violence against women that had its theoretical roots in abduction but quickly took on a life of its own.

In secular law, the Roman law's emphasis on abduction—as opposed to forcible sex—carried over into the Roman-influenced Visigothic law of the *Liber iudiciorum*.⁸² Here, the laws on *raptus* appear in Book Three, “Concerning Marriage,” and are accordingly focused on simple abduction and on preventing the subversion of carefully crafted marriage alliances. This *raptus* is primarily a crime against a woman's parents.⁸³ A closer match to a modern

conception of rape appears in a different section of the same book, under “Concerning Adulteries,” a title that deals broadly with illicit sexual contact. The fourteenth of eighteen laws in this title addresses the situation of a man, whether free or slave, who forcibly has sex with a free virgin or widow. In this law, we see the combination of sexual contact and force that characterizes the modern definition of rape treated as a public offense, with corporal punishment and enslavement for the free perpetrator and the death penalty for the rapist who was a slave. Even here, however, there is a bit of conflation with simple *raptus*: a later redaction of the code adds a section to this law punishing with perpetual enslavement the woman who, after the fact, consented to marry her attacker.⁸⁴ What we see here are the first tentative steps toward the invention of a legal category, but one that was still conflated with the idea of fictive abduction—in other words, an ambivalent approach to the category of rape that mirrors that of later Roman law.

One important point to note here is that an understanding of nonconsensual sexual contact as part of a larger category of “carrying off by force” had important implications for ownership of a woman’s sexuality and for who the victim of rape actually was. In the case of Visigothic law, the victim was the husband or parent of the raped woman. However, legal scholars began to approach the offense of rape in a new way in the high and later Middle Ages. Beginning with Gratian’s *Decretum*, rape became a type of unlawful sexual contact that, while related to both *stuprum* and *raptus*, involved not only abduction of a woman but also nonconsensual intercourse.⁸⁵ Picking up where Gratian left off, canonists gradually came to define the elements of the crime of rape as including not only sexual intercourse but also abduction, the use of force, and lack of free consent of one partner.⁸⁶ There was no new category of delict here: rape emerged as a subspecies of *raptus*, still at least theoretically involving force, abduction, and violence.⁸⁷ However, the increasing juristic emphasis on a woman’s lack of consent meant that legal authorities could now prosecute rape as a crime of violence against persons, and against women in particular, rather than as a property crime.⁸⁸

Bearing in mind the thin legal boundary between nonconsensual rape and potentially consensual abduction, women and their legal representatives were careful to emphasize the nonconsensual aspect of the rape. One way to accomplish this was to emphasize the element of abduction. The canon-law definition of rape, as developed by Gratian and refined by his successors, indicated that, while not all *raptus* was rape, all rape was a type of *raptus*; that is, to qualify as rape, a sexual assault ought to include an actual carrying-off

from one place to another, with the intention of hiding the victim away.⁸⁹ Case documents underline the importance of abduction by including it in the description of the rape and emphasizing that the abduction was forcible, so as to leave no doubt as to the nonconsensual nature of the crime—to oppose it, in other words, to the fictive abductions that couples used to arrange their own marriages, as discussed previously in this chapter. For example, when the virgin Saurina was raped, her mother Elicsenda noted that the assailant Pere de Cases had not only deflowered her daughter but had, with the aid of accomplices, “violently abducted” (*violenter rapuit*) her.⁹⁰ Likewise, the sons of Pere Divorra and en Morell were accused of having “violently removed” (*violenter extrahere*) the daughter of Arnau de Granyena from her home before they had raped her; the complaint further pointed out that the abduction had been carried out secretly and at night.⁹¹ And in Xàtiva, Nicholay ça Torre’s daughter was, if not abducted, then at least tricked away from the home of Jaume Rotlandi, where she had been staying, and led to the home of Ferrán Bevenguda, where she was raped.⁹²

On the other hand, community members and the Crown courts also felt free to interpret this provision of canon law more loosely, lodging and prosecuting rape complaints where no apparent abduction was involved. In at least one case, a legal representative used a linguistic dodge that shows an awareness of this difficulty, using the verb *rapere* in its broader sense as a forcible taking to describe how a rapist deprived his victim of her virginity (*florem rapuit*).⁹³ More often, however, plaintiffs and their representatives simply ignored the element of abduction where it was absent, emphasizing instead other factors to illustrate lack of consent. As one alternative, a woman might underline her vulnerability by noting that she was traveling unescorted, as in the case of Caterina, the wife of Martín Pastor, who accused Sancio de Anyo of raping her on the road between Tirasona and Montagut.⁹⁴ Alternatively, plaintiffs who were not victims of abduction might emphasize home invasion as illustrative of nonconsent. For example, when Bartolomeo raped the virgin Marta, daughter of Apparacio Ferrer, he did so in her own house, which he had broken into when she was home alone.⁹⁵ Rape narratives involving married or widowed women in particular tended to be set in or near the victim’s home while she was alone. In July 1319, legal action had been initiated against Jaume Bonnaçip, his friend Andreu, and other unspecified accomplices who had lain in wait in a neighbor’s doorway for Teresa Petri, wife of Arnau de Solerio, and had beaten her and attempted to rape her. Later, in September of the same year, Teresa appeared in royal court to implicate Valerius Esgermidor, Rayner

Correder, Joan Restany, Francesc Ramos, and the Augustinian friars Ferran Restany and Llorenç Rayner in the same crime and to ask that the courts provide justice.⁹⁶ Likewise, Dominech Alcover of Tortosa complained before the royal courts that Pere de Furno and four accomplices broke into his home in an abortive attempt to rape his wife.⁹⁷ And when the widow Domenga Aznar filed charges of attempted rape against Miguel Petri, son of Domingo Çinto, her courtroom narrative emphasized Miguel's forcible entry into her home.⁹⁸ In none of these cases is actual abduction of the woman mentioned—a fact that illustrates the courts' willingness to insert some flexibility into the legal definition of *raptus*. Forcible taking still remained at the core of the definition of the offense, but jurists seemed to be willing to recognize women as the owners of (if not the only ones with an interest in) their sexual integrity. *Raptus*, as prosecuted in the secular courts of the later medieval Crown of Aragon, was a violation of that integrity, with the woman herself as the primary victim.

Home invasion narratives might also be more necessary in cases involving married women and widows, whose claims were more likely to describe failed attempted rapes than successful ones, especially when compared with their unmarried counterparts.⁹⁹ We shall return later to this problem, but for the moment we might speculate that violent invasion of the home might well be a stand-in for the violent invasion of the body that is absent from these particular narratives.¹⁰⁰ The language of violence and force is, in fact, the primary way that plaintiffs connected with the discourse of rape as a crime against persons, rather than property. Court documents describing rape cases are generously salted with terms like “by force” or “violently” or even more specific descriptions of the use of force: “with four armed men . . . attempting to carnally know the wife of the aforementioned Dominech,”¹⁰¹ “forcibly mixing with her carnally,”¹⁰² and “violently having carnal dealings with her,”¹⁰³ to cite but a few examples. The degree of force necessary to qualify as rape was a matter of debate among canonists, but they generally agreed that force need not extend to immanent danger of death or grievous bodily harm. Even a threat could suffice, so long as the threat was credible:¹⁰⁴ nine-year-old Ermessenda Sabater reported that Bernat des Horts, after raping her, told her, “Be sure that I will kill you if you tell your father,” and when he realized that a group of children working nearby had witnessed the crime, he swore that “By the head of God, I will put you all to the sword if you speak of this.”¹⁰⁵

In one sense, we might interpret this use of the vocabulary of violence as a narrative strategy to ensure that the offense in question would clearly qualify as rape by emphasizing two important constituents of the crime: by

underlining the combination of sexual intercourse and force, these rape narratives differentiated the attacks from simple abduction or seduction. They also firmly positioned the female victim (as opposed to her parents or husband) at the center of the offense. But in another sense, the use of the language of force may be read as a response to a context of female vulnerability as outlined in previous chapters. For a woman to talk about rape within a context of sex rather than one of violence might plant images of consensuality in the minds of her audience, and the importance of female sexual reputation meant that all female talk about sex had the potential to rebound on the female speaker.¹⁰⁶ Female plaintiffs thus had a fine line to walk when describing violent sexual encounters: in a culture where submission to male authority and maintenance of sexual respectability were both essential components of appropriate female sexuality, women could have a difficult time describing rape in a way that did not implicate themselves as at least partially culpable.

This was especially important when the definition of *raptus* was so potentially ambiguous. In actual court cases, judges expected a victim to prove her lack of consent by having made an audible protest. This protest could come after the attack—the “hue and cry,” as it was known in the English legal system—and various medieval law codes from Aragon to Portugal required a raped woman to demonstrate distress and anguish immediately and publicly, most commonly by raking her cheeks with her nails until she drew blood.¹⁰⁷ But a woman was expected to demonstrate her lack of consent by protesting during the act as well. The *ius commune* law of rape did not require strenuous resistance to an attack,¹⁰⁸ but victims were expected at least to protest audibly or call for help.¹⁰⁹ Ermessenda Sabater, for example, testified that she had cried out “go away” (*viafors*) when Bernat des Horts tried to force her to the ground.¹¹⁰ Highlighting the ineffectual nature of Ermessenda’s resistance might actually have been the best strategy to employ in the predominantly male courtroom setting: effective physical resistance ran contrary to legal assumptions about inherent feminine vulnerability and thus could well work to a woman’s disadvantage as a sympathetic litigant.¹¹¹

In general terms, the way that litigants argued rape cases in the courts of the Crown of Aragon has suggested two things so far. First, even though there was no specific legal category for rape as clearly differentiated from *raptus*, both laypeople and court personnel recognized the existence of a particular type of offense constituted by nonconsensual sexual contact, even if it did not fit the precise parameters of a crime that had abduction at its core. Second, the way that rape complaints were argued and prosecuted strongly suggests that

court officials, neighbors, and women themselves saw women as the victims of this crime—legal persons who, regardless of age or marital status, could be harmed by nonconsensual sex. One way to test this latter conclusion is to examine the issue of how rape charges were brought to court. In much peninsular procedural law, rape could not be prosecuted *ex officio*; rather the charge had to be brought by the injured party, whether the victim herself, her parents if she was a minor, or some other person seen to have standing.¹¹² The case law on this point, on the other hand, is more difficult to sort out. In over half of the rape-related documents in the group analyzed in this chapter (18 of 30 cases), the documents do not specify who originated the charge. This can be at least in part attributed to the fact that in several of these documents, prosecution or investigation of the actual offense is not the central issue: seven are pardons, safe-conducts, or records of a negotiated settlement; six are follow-ups on cases already underway; three mention rape only in the context of a larger investigation of a public official; one is a set of witness depositions, lacking the original libel; and one simply leaves out the original plaintiff, for unknown reasons. The remaining twelve cases are closely split: in five cases, the plaintiff is the victim herself; in seven, a husband, parent, guardian, or employer lodged the criminal complaint. This slight advantage to the interests of others may lead to the mistaken assumption that a woman's status as owner of her own sexuality was in doubt; indeed, one case shows damages being awarded to the victim's parents and her fiancée—to everyone, it seems, except the victim herself.¹¹³ However, when we consider that in six of the seven cases in which someone other than the victim brought the complaint, the victim was unmarried and possibly underage, we need to consider the possibility that the victims involved in these cases were too young to act on their own behalf in court. Nancy Virtue has argued that the construction of rape outlined above, with its emphasis on women's consent, is indicative of an important change in the way that sexual violence against women was construed—that is, that the victims of such acts were the women themselves, rather than their parents or husbands.¹¹⁴ The way that rape was litigated in the Crown of Aragon shows the influence of *ius commune* standards that created a new category of offense where there was none before. In this litigation, women of whatever age are at the center, as victims of a violent attack, deprived of their personal bodily sovereignty. A woman's right to consent was hers alone, and the rhetoric of rape litigation underlined not damage to family honor but the fear and suffering of the victim herself.

Nevertheless, not all women who filed rape charges received equal

treatment before the law. Regardless of whether she was unmarried, married, or widowed, a woman's reputation mattered a great deal in litigating rape cases. As with other types of violence, the sexual reputation of a purported rape victim could affect the outcome of her case, and especially the perceived degree to which the attack had actually harmed her. Artistic depictions of rape found throughout Western Europe in the thirteenth and fourteenth centuries, both public and private, tend to show the victims as models of exemplary behavior and to call for severe punishment for the perpetrators of such crimes.¹¹⁵ The other side of this coin, however, was the legal and social vulnerability of women deemed to be without sexual honor. As noted in the previous chapter, a woman's legal personhood depended at least in part on her sexual reputation as perceived by members of her community. Women of questionable reputation might be grudgingly accepted as neighbors, but they were also easy targets for violence.¹¹⁶ This violence included rape, and the subject of whether a woman of dubious reputation could legitimately levy charges of rape in medieval courts is one that needs further research. Leah Lydia Otis has argued that, by the fifteenth century, prostitutes in particular were subject to fewer legal disabilities than they had been in earlier centuries and that this expanded legal personality extended to their ability to sue under rape law.¹¹⁷ On the other hand, Ricardo Córdoba de la Llave has noted for medieval Castile that when prostitutes, concubines, or other marginal women presented complaints of rape, it was generally in conjunction with another charge, and that rapists of prostitutes faced lighter punishment than rapists whose victims were more respectable women.¹¹⁸ This seems to have been the case in the Crown of Aragon, where rape of prostitutes was punished less severely, on the grounds that prostitutes' sexuality was public property: if there were "various and sundry who knew her carnally," then she was to be considered "a woman common to all, or a prostitute."¹¹⁹ This idea that a prostitute's sexuality was held in common seems to place her outside the norms of the previous section, where we noted that women owned their own sexuality. The distinction between women who were respectable and those who were not was further outlined in penal law: the *Costums* of Tortosa mandated that a man who raped a woman who was neither virgin nor married should provide enough money for her to find an appropriate husband—unless she was a public whore.¹²⁰ The law in question does not specify any punishment for the rapist of the latter type of woman, but the implication of this eloquent silence, combined with the use of the word "public" to describe such women, seems to be that these women's sexuality was public property, and that one could not be prosecuted for

stealing that which was common to all. Furthermore, as noted in the previous chapter, since the line between sexually active single woman and prostitute was often blurred, any woman who did not guard her sexual reputation could find herself without legal recourse when it came to prosecuting a rape committed against her.

Thus, a woman's ability to represent herself as sexually respectable and therefore owner of her own sexuality was a crucial point in courtroom narratives of rape. Probably the most direct and evocative way of illustrating respectability was to point out that a victim had been a virgin before the attack. Of the nineteen cases where the victim was clearly an unmarried woman, thirteen mention that the victim had been a virgin, often using terms like "deflowered" or "corrupted" to emphasize the fundamentally transformative nature of the damage done in the act.¹²¹ Virginity narratives did more than establish sexual blamelessness; they also increased the penalty on the convicted assailant. Valencian law, for example, distinguished between victims who were virgins at the time of the assault and those who were not. In the former case, the *raptor* was obliged to either marry his victim or provide her with a suitable dowry, under penalty of death; in the latter case, he was required to dower her, under penalty of imprisonment.¹²² Finally, virginity narratives signaled a way to prove that the rape had taken place, as physical proof of an alleged victim's loss of virginity might be established by inspection.¹²³ In the case of Ermessenda Sabater, the court called in three local women of good reputation, and "expert in such matters" to determine whether the girl was still a virgin. It is important to note, however, that though the courts, and possibly the community, may have established vaginal penetration as an index of rape, the courts may have given the alleged victims the benefit of the doubt on this point. In Ermessenda's case, at least, the inspection was carried out nearly six years after the fact and only at the insistence of Bernat des Horts, her alleged assailant.¹²⁴

Rape narratives also emphasize the particular vulnerability of young women, especially those separated from protective family networks.¹²⁵ In some cases, children were placed in temporary care of those who would harm them. When a widowed mother named Menga undertook a pilgrimage in the year 1314 or 1315, it was her job as sole manager of her own household to make arrangements for the well-being of the family, possessions, and employees she left behind. To this end, she enlisted the aid of Domingo de Fuerenis, a relative of a member of Menga's household. According to their agreement, Domingo would remain in the town of Ricla where Menga lived and would

manage her affairs until she returned. Unfortunately for Menga, Domingo took advantage of her absence, not only to steal two of her mules but also to rape her daughter.¹²⁶

More often, though, a temporary (and potentially hazardous) separation occurred for girls while at work. Girls and young women of all but the wealthiest families contributed to the household economy, either by aiding in their own family's economically productive tasks or by working for or learning a trade from other families.¹²⁷ In many cases, the young women involved moved in with their employers for a certain term, and many sexual assaults took place under just such circumstances: of the nineteen cases from my sample in which the victims were unmarried, eight were living away from parents or other family (usually for work-related reasons) when the attack occurred.¹²⁸ In the Valencian town of Morvedre, Marieta, the *ancilla* of Geraldo Folchau, *bayle* of Morvedre, complained before the royal courts that her employer's son Periconius had attempted to rape her in his father's house.¹²⁹ Another young woman living in Barcelona was gang-raped when a group of armed young men broke into the home of a widow for whom she was apparently working as a live-in domestic.¹³⁰ And in the Catalan town of Manresa, the accusation against Bernat de Vallariola alleged that he had abducted and raped an unnamed girl (*quandam puellam*) who was living as a member of the household of Pere de Figuerola, apparently as a domestic.¹³¹ The fact that these cases did not involve an actual abduction suggests that medieval people, whether lay or legal professionals, saw a crime to prosecute in forcible, nonconsensual contact. However, they also speak to the importance of presenting a narrative of sexual blamelessness, in terms of the binary of sexual respectability discussed in the previous chapter.

Documentary references to a rape victim's extreme youth could further highlight her vulnerability and lack of consent—the latter integral to the definition of rape, the former a part of overall cultural assumptions about women in general and young women in particular. According to one study of violence in fourteenth-century Catalonia, rapes of minors accounted for half of all rape cases that came to trial.¹³² In narratives of these attacks, the parents who brought the cases and the legal professionals who drew them up referred to the victims as *puellae*, emphasizing their youth.¹³³ The term *puella* was generally applied to a girl younger than twelve, based on the age at which girls were deemed to have reached physical maturity, but judges and other legal professionals may have applied the term to slightly older girls, for the purpose of underlining a particular vulnerability.¹³⁴ These documents also

noted the victims' specific age when it could be used to good effect. According to her own testimony and that of others, Ermessenda Sabater had been tending animals in a remote part of the parish of Esponellà, accompanied by other children engaged in similar tasks, when Bernat des Horts abducted her, carried her into the neighboring vineyard where he had been working, and raped her. At the time of the attack, her parents placed her age at about nine years old.¹³⁵ In a strikingly similar case from another part of the Crown realms, Martineta had been sent by her parents to the estate of Guillem de Oras, a member of the military elite of Huesca, with the agreement that she would reside in his home while helping to bring in the harvest. While she was away from her family's protection, Stefano Vasto arrived and, "acting with horrible inhumanity and disdaining good sense," abducted the girl and deflowered her with such violence that, because of her tender age, she was left "half-dead" and lay abandoned for that whole day, unconscious and barely breathing when she was found. Her father, who lodged the complaint, noted that his daughter was barely nine years old.¹³⁶ It is worth nothing that, of all thirty rape cases I have recovered from the records of the archive of the Crown of Aragon during the first third of the fourteenth century, only these two mention a specific age of the victim. Thus, the age of these rape victims seems to have been included not as a standard part of a rape charge but as part of a narrative strategy to highlight these victims' special vulnerability and underline the fact that these relations had been, by definition, nonconsensual.

Court documents might also emphasize a woman's vulnerability relative to her attacker by using emotionally charged language to describe a particular savagery on the part of the accused assailant. Legal rhetoric occasionally linked the rapist and his crime with real evil: attackers were "led by a diabolical spirit" (*diabolico spiritu ductus*),¹³⁷ "led by an evil spirit" (*ductus maligno spiritu*),¹³⁸ "animated by a diabolical spirit" (*diabolico spiritu animatus*),¹³⁹ or "prompted by diabolical daring" (*ausu diabolico ductus*).¹⁴⁰ While such highly charged phrases appear in only five of the thirty cases analyzed for this chapter, Ricardo Córdoba de la Llave has found such expressions to be fairly common in the rape litigation in fifteenth-century Castile, speculating that legal officials used language like this specifically to evoke a special horror¹⁴¹ or to denote a case that occasioned a general scandal.¹⁴² Guido Ruggiero's analysis of the use of variants on this phrase in rape records from later medieval Venice accords with this line of thinking, noting that the phrases show up more frequently after 1350 and seemingly as a replacement for a parallel rhetorical flourish, "moved by evil desire."¹⁴³ But the attacker's intent may be only part of the equation:

the fact that the language of diabolical inspiration appears most often—four out of five times in this case—in cases involving unmarried women again underlines the special outrage that the rape of virgins in particular could provoke. Likewise, young women, especially virgins, predominated among documents in which royal officials call for the courts to mete out justice in a manner that would serve as a public example.¹⁴⁴ Virgins were the victims in all but one of five cases in which the royal courts specified that the punishment ought to serve as an example. In the single exception to this pattern, the courts' outrage may have been based on the fact that the victim, Teresa Petri, wife of Arnau de Solerio, had received a severe beating during an attempted rape.¹⁴⁵

Yet the awareness of the deterrent value of punishment in rape cases brings up a paradox in the link between rape, virginity, and penal law: the preponderance of out-of-court settlements when the rape victim was a virgin. Sexual experience did not disqualify a woman from a respectable marriage, but it seems to have made her a less attractive prospect, and a young woman who came into a marriage without her virginity intact would likely have needed to produce a larger dowry to compensate for her decreased value on the marriage market.¹⁴⁶ In response to such cultural imperatives, the outcome might be a marriage arranged between victim and assailant: in one study focusing on fourteenth-century Catalonia, rapes of minors accounted for somewhere around one-half of the rape cases that came to trial, and almost 15 percent of these cases resulted in marriage.¹⁴⁷ Canon lawyers generally tried to prevent rapists from marrying their victims¹⁴⁸ but did not go so far as to prevent such marriages, provided that the rapist had done penance for his crime and that all parties involved had given free consent to the match.¹⁴⁹ It may be that many marriages made under this particular provision of the medieval law surrounding *raptus* were fictive abductions of the type discussed earlier in this chapter, engineered to make a marriage without parental interference. But the canon law of *raptus* was designed with nonconsensual sexual contact in mind and took for granted that an unmarried woman who engaged in illicit sexual contact—even when that contact was merely the byproduct of a violent assault—would find herself in need of a legal remedy for damaged reputation.

Secular law codes in the Crown of Aragon made similar provisions: the Code of Tortosa, for example, declared that if a man raped a virgin and she or her friends raised a cry, then he should either marry her or give her a marriage portion as he would his wife.¹⁵⁰ Valencian law made a distinction between victims who were virgins and those who were not. In the former case, the attacker was obliged to either marry the woman or provide her with a suitable

dowry, under penalty of death; in the latter case, he was required to dower her, under penalty of imprisonment.¹⁵¹ Not all such settlements were court-ordered, however. Pedro Paschasi was charged with having kidnapped and raped Elpha, the daughter of Paschasi Devens, a resident of the village of Sant Agustín, near Teruel; but by the time he was forcibly brought before the royal court to answer charges, he had already, with a friend acting as intermediary, made arrangements with Elpha's father and other relatives to pay compensation and to marry her. In exchange, Pedro received a royal pardon and immunity from any civil or criminal prosecution, provided that he fulfilled the conditions of the agreement.¹⁵² The court documents do not mention the views of the girl in question, but such arrangements apparently seemed the best possible solution for everyone concerned. Another case suggests that a victim's consent *was* important: when Menga, daughter of María Marquez de la Aldeynela, alleged that Paschasi Martín, aided by Domingo Lopez, had raped her and thereby taken her virginity (*quod ea violaverat seu corrumperat*), the accused parties were brought before the *zalmedina* of Zaragoza to answer the charges. Rather than facing criminal penalties, it was decided that the attackers should pay compensation to both Menga and her mother. In addition, the *zalmedina* ordered Paschasi to marry Menga, but only if she and her mother consented. In this case, consent was critical: if both Menga and her mother did not agree to a marriage, Paschasi would be permanently banished from the Crown territories.¹⁵³

As noted above, however, considerations besides consent factored into the decision as to whether a legal marriage was also appropriate for both the parties involved. The class distinctions inherent in Catalano-Aragonese society were woven into the legal discourse surrounding rape, and if a rapist was of much higher station than his victim, he could not be compelled to marry her but might instead avoid prosecution by providing her with enough money to find a husband more suited to her station.¹⁵⁴ Marriage was apparently out of the question when Francesc Rovira, Ramon d'en Barri, and Guillem Duystrell conspired in the rape of Margarita, the daughter of Bernat Carriba de Ripoll. But with the mediation of Ot of Montcada, procurator of Catalonia and head of one of Barcelona's most important noble families, an agreement was reached to provide the girl with a hefty dowry of 800 sous of Barcelona, in exchange for full pardons for all three of her attackers.¹⁵⁵ Legislators, however, recognizing that the same social imbalance that created the necessity for compensation (rather than marriage) could also result in a well-to-do attacker refusing to make good on such an arrangement, gave this provision of

the law some teeth, mandating that upper-class men who defaulted on such agreements or refused to negotiate them in the first place face beheading.¹⁵⁶ When we note that the pardon of Pedro Paschasi in the previous paragraph was made contingent upon his fulfillment of the conditions of settlement, we see how a law like this worked out in practice: financial settlement seems to have been preferable to criminal prosecution, but the latter was kept in play to discourage defaults. Either way, punishments that appear in case documents suggest that attitudes toward the rape of virgins transcended matters of social standing, at least enough for legislators and legal professionals to treat these rapes as a serious legal matter.

The prosecution of rape seems to have been different for married women than for virgins. Claiming the status of a married woman, like claiming the status of virgin, was another way of establishing that a woman's sexuality was not public property. This strategy could even be applied by women who were not fully married but merely betrothed. Paschasa, daughter of Juan Sanchez, noted that she was betrothed to the king's jester Bonatorso Donati when a resident of Teruel named Sancho kidnapped her off the road between Villarquemado and Capdet and raped her.¹⁵⁷ Likewise, the documents in the above-mentioned case involving the daughter of Nicholay a Torre take pains to mention that the victim was betrothed and scheduled to have her union solemnized *in facie ecclesie* the following Saturday.¹⁵⁸ Most of the secular law of rape in the fourteenth-century Crown of Aragon—like its Roman and Germanic antecedents—punished the offense differently depending on the relational category to which an individual victim belonged. The majority of medieval rape legislation focused on coercive intercourse with unmarried girls and women, treating the rape of married women as a separate category of the same crime. Visigothic law relegated the rape of married women to the title on adultery and was primarily concerned with conflicts over inheritance that might arise if children resulted from the rape.¹⁵⁹ Some Catalan legal codes may have punished the rape of married women more lightly than rape of virgins.¹⁶⁰ On the other hand, the Code of Tortosa assigned the death penalty to men who raped married women in particular,¹⁶¹ and some canon lawyers held that rape of a married woman should be considered more serious than rape of an unmarried girl, since the former crime was compounded by the crime of adultery.¹⁶²

The patterns of rape cases involving married women differed in other ways as well. One study of violence in fourteenth-century Catalonia indicates that about half of accusations involving rape of a married woman were,

in fact, accusations of attempted rape, since an attack on a married woman might be interrupted by her husband's return,¹⁶³ not only staving off the attacker but providing an important witness to the crime. This high proportion of attempted rapes of married women prompts the question of why so few married women reported fully consummated rapes. Guido Ruggiero has suggested for later medieval Venice that the authorities did not take rape very seriously, except in cases where the victim was either extremely young or of a much higher social station than her attacker.¹⁶⁴ I would argue, however, that something about the married station in particular, combined with notions of sexual respectability discussed in the previous chapter, motivated married rape victims to keep silent. Unlike an unmarried woman, who might receive compensation for her lost virginity, married women and widows had little to gain by prosecuting their assailants if the crime was not generally known. Of the five cases in which financial compensation is specified, only one is for a woman who was *not* a virgin: Domenga Aznar of Tarazona, widow of Garcia Jiménez, was awarded unspecified financial compensation in response to an attack that had taken place the previous year. This case, however, seems to be exceptional, in that her attacker Miguel Petri not only severely injured her when he broke into her home in an attempt to rape her, but also followed this attack with another, in which he induced her by trickery to come out of her house, then beat her, apparently intending to kill her.¹⁶⁵ In general, for married or betrothed women and their husbands or fiancés, the risks of prosecuting a rape or attempted rape may have outweighed the meager or nonexistent rewards. As noted above, a woman had much to lose by talking openly about sex. If a married woman in particular lost her case, she opened herself to being branded an adulteress or otherwise sexually suspect, with all the disabilities that degraded status entailed. Nor would the husband of a raped woman escape potential damage: as noted in the previous chapter, a stain on a married woman's sexual honor had a significant impact on her husband's reputation within the community. Thus, we might easily imagine a married couple deciding against prosecuting in the courts, so long as the rape did not become public in a way that necessitated an equally public response in order to salvage family or individual reputation within the community. Considering the tangled nature of the honor of married men and women, combined with the suspicion with which female sexuality was viewed, the low number of cases involving the rape of married and widowed women is an unsurprising result of the intersection of gender and legal culture.

Conclusions

By the later Middle Ages, canonists had more or less consolidated their position on rape, and the secular courts had added financial and corporal penalties to the spiritual ones levied by the canon law courts. But when we add up the evidence—the legislative focus on compensation rather than punishment, the preponderance of young women among litigated rape cases, the particular focus on loss of virginity in these documents—we are left with a mixed notion of what assumptions underlay the prosecution of rape. The zeal with which rape of virgins was prosecuted, contrasted with the ambivalence about whether it was even possible to rape a prostitute and the reticence of married women to talk about their rapes, suggests that rape was considered most seriously when the victim could make an unimpeachable claim to sexual honor.

Yet laid within a larger context of crimes of violence against women, we might have cause to read rape a bit differently. First, violence against women was an area of litigation where relational category, sexual reputation, and overarching legal ideas about women and gender in general intersected. The combination of the three signaled to neighbors and authorities how much and what an acceptable level and type of violence was in the case of any individual woman and how (if at all) that violence would be penalized. Female litigants responded by constructing their legal personae according to assumptions of vulnerability or dependency. In spousal abuse cases, the idea of a woman as a natural dependent in a male-headed household allowed a husband a bit of latitude in “correcting” his wife, but assumptions about the vulnerability that arose from female dependency on men likely worked in women’s favor when suing for restitution of their dowries in order support themselves in the wake of a legal separation from a cruel husband. Rape litigants also took special care to emphasize particular vulnerabilities: youth, virginity, and isolation from family all played into larger assumptions about women as members of a legal class in need of special protection.

Violence litigation also illustrates women’s awareness of the importance of relational categories *within* the larger category of “woman.” In spousal abuse cases, married women accessed the Roman- and canon-law concept of *maritalis affectio* to establish that their violent husbands were in violation of the principles of the *ius commune*—an important consideration, given that laws in the Crown of Aragon did not specifically address the issue of spousal violence that stopped short of murder. Rape victims also framed their stories according to their particular relational status: a young woman might emphasize that she was betrothed

or a virgin, while a married woman might mention that a rapist had broken into her house, subtly underlining the fact that she was exactly where a respectable married woman was supposed to be: in her home and not out on the streets.

Most important perhaps, we see female litigants trying to position themselves on the correct side of the line between deserving and undeserving women outlined in the previous chapter. In abuse cases, wives went out of their way to prove that they had been good women, opposing their behavior to that of their ne'er-do-well husbands or the "depraved" women their husbands were consorting with. But the necessary obverse of this legal strategy was that a woman whose reputation was questionable—in this case, an adulterous woman—could be beaten or even murdered by her husband with near-impunity. Reputation was even more important in rape cases. Like "prostitution" in the previous chapter, the modern crime of rape did not have a precise conceptual match in medieval law for most of the Middle Ages. By the later Middle Ages, jurists were just beginning to define nonconsensual sex as a prosecutable offense in and of itself, semidetached from some of the more restrictive constraints of the classic definition of *raptus*. Canonists in particular recognized women as legal persons with the power to grant or withhold consent. But legal practice tempered the primacy of consent with assumptions about female respectability and its impact on an individual woman's legal personhood. Courts punished the rape of prostitutes less severely than that of respectable married or single women because prostitutes' sexuality was considered public property; thus, the prostitute herself had no legal standing to grant or withhold consent. But bearing in mind the previous chapter's argument about how the category of "prostitute" was ill-defined and reputation-dependent, and could take in any woman whom the community judged to be unacceptably promiscuous, it is easy to see why women in rape cases worked hard to structure narratives of sexual blamelessness for themselves.

The behavior of women in the later medieval Crown of Aragon, like that of women in other places throughout medieval Europe, may have been subject to intense regulation and surveillance, but women's litigation of violent acts committed against them shows their awareness of how carefully they were being watched. Under the eyes of neighbors, family, and judges, women represented themselves in strategic ways, with the primary goal of achieving a favorable outcome in court. But with every woman who took pains to assert her status as respectable matron or sexually unimpeachable virgin before an attack, the categories of analysis that divided the larger category of "woman" became more entrenched.

Conclusions

By the year 1300, the legal system in the Crown of Aragon was firmly grounded in both the principles and procedures of the *ius commune*. Although areas of seigneurial jurisdiction, both lay and ecclesiastical, persisted throughout the Middle Ages, and although Jewish and Muslim *aljamas* maintained at least limited judicial autonomy, by the early fourteenth century, aspiring lawyers and jurists from throughout the Crown territories had been returning from law schools in Bologna and Montpellier for over a century, bringing with them the legal ideas that went into the creation of the great territorial law codes of the thirteenth century and into the way that law was practiced in courtrooms. The count-kings of the medieval Crown of Aragon welcomed the new law for its imperial political ideology that supported their centralizing policies, and these centralizing policies in turn helped spread royal law and legal institutions throughout the sometimes-fractious composite monarchy.

The Roman law of the *ius commune* also provided a body of legal theory supporting a gender system that excluded women from most roles of public power, backed male authority over women in the private sphere of the household, and underscored and enforced gendered standards of sexual propriety. The patriarchal emphasis of the Roman law of the *ius commune* was at least in part moderated by canon law, which emphasized the essential legal personhood of women, their rights to own (if not manage) their own property, and their capacity to give and withhold consent in marital and sexual matters. But canonists tended to focus on women's spiritual equality to men and to leave to the civilians the substantive legal questions that brought most of women's cases before the secular courts. Nevertheless, some of the gender ideas in canon law could provide women with important leverage in the courts, and the contradictions and practical paradoxes that arose from the combination of the two halves of the *ius commune*, as filtered through the statutes and rulings of a particular time and place, meant that the active participation of women

and their relations and neighbors was essential in the developing legal culture of the later Middle Ages.

Lopsided gender ideas in the law were not an invention of the *ius commune*-trained jurists of the high and later Middle Ages. As noted in the introduction, the customary laws over which Romano-canonical law had been layered could be even more restrictive for women. But the *ius commune* was a body of law built on a foundation of broader legal and cultural assumptions, and these ideas that lay behind the law may have had as important an impact on women's lived experience as the substantive law itself. Three mutually reinforcing assumptions about the essential legal nature of women were key in this process: women, as a class, were naturally weak and vulnerable, lacked the intellectual capacity to manage their own affairs, and were too naturally modest to take part in public life, including the public life of the law courts. The result for the later medieval Crown of Aragon was the formation of law codes that treated women in general as creatures in need of the law's protection, not just from others but also from themselves and their own inherent disabilities.

As these underlying assumptions worked their way into statute law and courtroom proceedings, women found themselves increasingly constrained by the rules of a legal culture built upon the foundation of a recycled Roman patriarchal ideal. Yet case law from the later medieval Crown of Aragon shows women actively litigating for themselves and on behalf of others, winning judgments that seem to contradict what we might expect from a legal system founded on assumptions of female dependency and vulnerability. It would be too simplistic, however, to interpret this phenomenon as merely a case of "written law versus reality" or of women subverting the law. Such interpretations are problematic because they rest upon an assumption that female agency with regard to the law can only be couched in terms of resistance, implicitly presenting women as the victims of historical processes in which they, unlike men, had no say.

The alternative approach that I have presented in these pages is that the nature of the relationship between women and law—even a law that seems to herald a change for the worse for women—should not always be read as oppositional. As the gender ideas encoded in the laws of the *ius commune* made their way into the law codes of the medieval Crown of Aragon and the legal imaginations of the men who adjudicated cases according to those laws, women and their legal representatives had to use the conceptual vocabulary of the learned law to structure their legal narratives. But as I have also argued in the foregoing chapters, there was not a single legal discourse surrounding

women; rather, there was a complex and multilayered legal identity that female litigants had to negotiate. First and perhaps foremost, all women were subject to legal assumptions of vulnerability, weakness, dependence, and modesty. But the way that these assumptions were applied to individual women depended on a second set of identities, a relational taxonomy (for example, daughter, wife, or widow). Finally, all women were subject to a third matrix of legal and social identity: a distinction between respectable and disreputable women that played a large part in determining whether an individual woman would be entitled to the protection of law accorded to a woman of her particular relational status and to women in general. These three overlapping sets of identities were not new to the later Middle Ages, but the growing influence of the *ius commune* on continental law made it increasingly difficult for women to represent themselves effectively in court in any terms other than those that underpinned the written law.

The points above, taken in isolation, might lead us to envision the relationship between women and the *ius commune* revolution as similar to that of the women in Joan Kelly's Renaissance: that the "high points" of the historical master narrative are actually (and perhaps necessarily) low points for women.¹ But the problem with doing so for the *ius commune*, as for any other historical movement regarded as bad for women, is that it gives too much agency to an impersonal historical force and too little to the women who actively used the conceptual vocabulary of the learned law to secure outcomes that seem to contradict legal notions of women as a protected—and restricted—class. Through their own litigation, women in the later medieval Crown of Aragon, like their counterparts throughout the Mediterranean region and even the rest of Western Europe, participated in shaping the legal culture that in many ways influenced their lives. Furthermore, women did not do these things in a vacuum but rather in the course of their daily interactions with others. In most cases, this interaction was probably cooperative, but in other circumstances, women's decisions and actions provoked conflict that sometimes brought them into direct contact with the legal system, and the records of those points of contact allow us to see women's essential role in the shaping of the larger legal culture.

The nature of the sources used in this study mean that the stories in the preceding pages are in some ways exceptional: because these are litigation records, what we see are the cases that produced conflict, rather than the vast majority of women who lived their lives without ever having to set foot—or send a representative—before a judge. Yet these sources may serve to shed

some light on the lives of those many women who remain hidden from the historian's view. First, the records mention in passing and in some cases give us relatively detailed descriptions of activities and life events that were common to many women: women owned and managed property; they married, became widows, and in some cases remarried; they raised children and looked after the well-being of their households; they made decisions as to their sexual lives and lived with the positive and negative consequences of those decisions; and they were occasionally victims or even perpetrators of physical and verbal violence. Second, the cases in these pages reveal the bifurcated legal nature of women in general: on the one hand, their legal interests were almost always mediated by others; on the other, they were recognized as independent persons with the ability to give or withhold consent to decisions affecting their lives. Women thus asserted their rights to self-determination, but often at one remove, mediated by parents, husbands, male co-guardians of their children, members of their husbands' lineages, and the legal professionals and royal officials for whom they had to shape their stories.

Overall, when women claimed authority that put them in conflict with legal ideas of what was appropriate for their gender and life stage, they could expect consequences and trade-offs. Female litigants in the later medieval Crown of Aragon who wanted to procure a favorable decision in court had to learn to speak the language of a legal culture shaped by the *ius commune* and to negotiate its obstacles, and the consequences for failure to do so effectively were high. We would be wrong, however, to portray women as victims of this historical process. Rather, as the preceding chapters have shown, they were active participants. Case by case, they negotiated individual outcomes for themselves. But the overall outcome for women was to solidify underlying assumptions about women's basic legal nature that would shape the lives of women for centuries to come.

Abbreviations

ACA	Arxiu de la Corona d'Aragó, Barcelona (C = Cancelleria)
ADB	Arxiu Diocesà de Barcelona
ADG	Arxiu Diocesà de Girona
AHCM	Arxiu Històric Comarcal de Manresa
AHCT	Arxiu Històric Comarcal de Terrassa
AHDE	<i>Anuario histórico de derecho español</i>
AMG	Arxiu Municipal de Girona
C. Tort.	<i>Código de las Costumbres de Tortosa</i> , ed D. Bienvenido Oliver. 4 vols. In <i>Historia del derecho en Cataluña, Mallorca y Valencia</i> . Madrid: Ginesta, 1876.
Cod. Theod.	Mommsen, Theodor, Paul M. Meyer, and P. Krüger, eds. <i>Codex Theodosianus</i> . 3 vols. 1904. Repr. Hildesheim: Weidman, 1990.
CADC	<i>Constitucions i altres drets de Catalunya</i> . Barcelona: n.p., 1704; repr. Barcelona: Base, 1973.
Const.	<i>Constitutions de Cathalunya</i> (comp. 1702)
Prag.	<i>Pragmaticas y altres drets de Cathalunya</i> (comp. 1702)
Recog. Proc.	<i>Recognoverunt Proceres</i> (pragmaticas 1.13 [1283])
Sup.	<i>Constitutions y altres drets de Cathalunya, superfluos, contraris, y corregits</i> (comp. 1704)
CG	Cots y Gorchs, Jaime, ed. <i>Consuetudines dioecesis gerundensis: estudio y transcripción segun los mm. ss. más antiguos del siglo XV</i> . Barcelona: Librería Casulleras, 1929.
CG 1	Primitive compilation (thirteenth century)
CG 2	Compilation of Mieres (fifteenth century)
CCL	Loscertales de Valdeavellano, Pilar, ed. <i>Costumbres de Lérida</i> . Barcelona: n.p., 1949.

- CSIC Consejo Superior de Investigaciones Científicas/Consell Superior d'Investigacions Científiques
- Eiximenis Eiximenis, Francesc. *Lo libre de les dones*. Ed. Frank Naccarato and Curt Wittlin. Barcelona: Curial Edicions Catalanes, 1981.
- FA Parral y Cristobal, Don Luis. *Fueros, Observancias, Actos de Corte, Usos y Costumbres . . . del reino de Aragón*. Zaragoza: Mariano Salas, 1907.
- FT Gorosch, Max, ed. *El Fuero de Teruel*. *Leges Hispanicae Medii Aevii* 1, ed. Gunnar Tilander. Stockholm: Almqvist and Wikssels, 1950.
- FV Colón, Germà, and Arcadi Garcia, eds. *Furs de València*. 8 vols. Barcelona: Barcino, 1970–.
- Leg. Vis. Zeumer, Karl, ed. *Leges Visigothorum*. *Monumenta Germaniae historica*, *Leges* vol. 1, sectio 1. Hannover: Hahn, 1902.
- MV Docs. Mutgé i Vives, Josefina. "Documents sobre vida ciutadana i urbanisme a Barcelona durant el regnat d'Alfons el Benigne (1327–1336)." *Miscel·lànea de textos medievals* 7 (1994): 259–322.
- OAM Martínez Díez, Gonzalo. "Dos colecciones de Observancias de Aragón," *AHDE* 45 (1975): 543–94. From British Museum MS Add. 36,618, fol. 66r–83r, 59r–63r.

Citations to the legal collections of the *ius commune* are as follows:

Friedberg, Emil, ed. *Corpus iuris canonici*. 2 vols. Graz: Akademische Druck- u. Verlagsanstalt, 1879; repr. Union, N.J.: Lawbook Exchange, 2000.

X Liber extra (= *Decretales Gregorii IX*)

VI Liber sextus decretalium

Citations to the *Decretum* of Gratian are rendered in the standard modern form; see James A. Brundage, *Medieval Canon Law* (London: Longman, 1995), 193–94.

Krüger, Paul, ed. *Corpus iuris civilis*. 3 vols. Berlin: Weidmann, 1872–95; repr., 1963–65.

Cod. Codex Iustinianus

Dig. Digesta

Nov. Novellae

Notes

INTRODUCTION: LEGAL TEXTS AND GENDERED CONTEXTS

1. Heath Dillard, *Daughters of the Reconquest: Women in Castilian Town Society, 1100–1300* (Cambridge: Cambridge University Press, 1984).

2. As Judith Bennett has noted, however, coverage of premodern women in English-language publications has lagged behind that of women in other time periods; see Bennett, *History Matters: Patriarchy and the Challenge of Feminism* (Philadelphia: University of Pennsylvania Press, 2006), 30–53.

3. See, for example, Allyson M. Poska, *Women and Authority in Early Modern Spain: The Peasants of Galicia* (Oxford: Oxford University Press, 2006); Marta V. Vicente, *Clothing the Spanish Empire: Families and the Calico Trade in the Early Modern Spanish World* (New York: Palgrave Macmillan, 2006); and Lisa Vollendorf, *The Lives of Women: A New History of Inquisitional Spain* (Nashville, Tenn.: Vanderbilt University Press, 2005). For a foundational English-language treatment of women and gender ideas in early modern Spain, see Mary Elizabeth Perry, *Gender and Disorder in Early Modern Seville* (Princeton, N.J.: Princeton University Press, 1990).

4. For queens, see Theresa Earenfight, ed., *Queenship and Political Power in Medieval and Early Modern Spain* (Burlington, Vt.: Ashgate, 2005); Peggy Liss, *Isabel the Queen: Life and Times* (Philadelphia: University of Pennsylvania Press, 2004); and Núria Silleras Fernández, *Power, Piety, and Patronage in Late Medieval Queenship: María de Luna* (New York: Palgrave Macmillan, 2008). For nonaristocratic women, see Rebecca Lynn Winer, *Women, Wealth, and Community in Perpignan, c. 1250–1300: Christians, Jews, and Enslaved Muslims in a Medieval Mediterranean Town* (Burlington, Vt.: Ashgate, 2006).

5. Manlio Bellomo, *The Common Legal Past of Europe, 1000–1800*, trans. Lydia G. Cochrane (Washington, D.C.: Catholic University of America Press, 1995), esp. 58–77. There is some debate as to whether it is appropriate to designate the *Corpus iuris civilis* as having been “lost” and later “recovered,” but it is only during the eleventh century that Justinianic legal principles begin to be cited frequently in notarial instruments. See Peter Stein, *Roman Law in European History* (Cambridge: Cambridge University Press, 1999), 43–48.

6. *Las Siete Partidas*, trans. Samuel Parsons Scott, ed. Robert I. Burns, S.J., 7 vols. (Philadelphia: University of Pennsylvania Press, 2000). Historians of medieval Castile have

long noted that the presence of Roman law in the *Siete partidas* did not necessarily imply that such law was being used. For at least a century after the redaction of the *Partidas*, Castilian magnates resisted the local fueros being supplanted by the *Fuero real* or the *Partidas*, and both royal justice and Roman law penetrated the kingdom very slowly. By the later fourteenth century, however, Roman law (and jurists trained in it) had made significant inroads into Castile, bringing along with them all the contradictions of Roman law's vision of women. Diana Arauz Mercado, *La protección jurídica de la mujer en Castilla y León (siglos XII–XIV)* (Valladolid: Junta de Castilla y León, Consejería de Cultura y Turismo 2007), 17; Dillard, *Daughters of the Reconquest*, 4.

7. Arauz Mercado, *La protección jurídica de la mujer*, 291–95; see also María Francisca Gámez Montalvo, *Régimen jurídico de la mujer en la familia castellana medieval* (Granada: Comares, 1998), 13–14.

8. Maria Teresa Guerra Medici, *Orientamenti civilistici e canonistici sulla condizione della donna* (Naples: Edizioni scientifiche italiane, 1996), 29–45.

9. Thomas Kuehn, "Person and Gender in the Laws," in *Gender and Society in Renaissance Italy*, ed. Judith Brown and Robert Davis (London: Longman, 1998), 91–93.

10. Maria Teresa Guerra Medici, *L'aria di città: donne e diritti nella città medievale* (Naples: Edizioni scientifiche italiane, 1986), 32–35.

11. Kathryn Reyerson and Thomas Kuehn, "Women and Law in France and Italy," in *Women in Medieval Western European Culture*, ed. Linda E. Mitchell (New York: Garland, 1999), 136–39; Kuehn, "Person and Gender in the Laws."

12. Barbara B. Diefendorf, "Women and Property in Ancien Régime France: Theory and Practice in Dauphiné and Paris," in *Early Modern Conceptions of Property*, ed. John Brewer and Susan Staves (London: Routledge, 1996), 170–93; see also Julie Hardwick, *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (University Park: Pennsylvania State University Press, 1998), esp. xvi: "Family members were actors as well as subjects in historical processes, and their selection of choices played a part from a grassroots level—as did ideology and laws—in shaping the broadly patriarchal political culture of early modern France."

13. Martha C. Howell, *The Marriage Exchange: Property, Social Place, and Gender in Cities of the Low Countries, 1300–1550* (Chicago: University of Chicago Press, 1998), esp. 15–18, quote at 17.

14. Martha Howell has used the phrase "social logic" to talk about medieval litigants' choices when faced with what seem to the modern eye to be competing legal principles; see Howell, *The Marriage Exchange*, 97–122.

15. Many of these codes show strong relationships with each other, suggesting that they were developed not so much as a reaction to local circumstances but rather as variations on a common conceptual template. Vicente García Edo, "El parentesco entre las costumbres de Lérida (1228), València (1238) y Tortosa (1273)," *AHDE* 67 (1997): 173–88.

16. See Hastings Rashdall, *The Universities of Europe in the Middle Ages*, rev. ed., ed. F. M. Powicke and A. B. Emden (Oxford: Clarendon, 1936).

17. Federico Udina Martorell, *Guía histórica y descriptiva del Archivo de la Corona*

de Aragón (Madrid: Ministerio de Cultura, 1986); for Chancery section in particular, see 169–234.

18. For nobles in the Crown of Aragon, see Stephen P. Bench, *Barcelona and Its Rulers, 1096–1291* (Cambridge: Cambridge University Press, 1995).

19. For charitable institutions in the Crown of Aragon, see James William Brodman, *Charity and Welfare: Hospitals and the Poor in Medieval Catalonia* (Philadelphia: University of Pennsylvania Press, 1998), esp. 100–124 for institutions dealing with the poverty of women in particular. For a detailed discussion of the place of the poor (and especially of poor women) within the medieval city, see Sharon Farmer, *Surviving Poverty in Medieval Paris: Gender, Ideology, and the Daily Lives of the Poor* (Ithaca, N.Y.: Cornell University Press, 2002).

20. The work of the late Elka Klein was at the forefront of the exploration of Jewish women in Catalonia and was tragically cut short by her untimely death; see, for example, “The Widow’s Portion: Law, Custom, and Marital Property Among Medieval Catalan Jews,” *Viator* 31 (2000): 147–62. For other important work on female religious minorities in medieval Iberia, see Louise Mirrer, *Women, Jews, and Muslims in the Texts of Reconquest Castile* (Ann Arbor: University of Michigan Press, 1996); and Winer, *Women, Wealth, and Community in Perpignan*.

21. Cristina Segura Graíño, ed., *Las mujeres medievales y su ámbito jurídico* (Madrid: Universidad Autónoma de Madrid, 1983), 8.

22. Segura Graíño, *Las mujeres medievales*, 8.

23. Dillard, *Daughters of the Reconquest*, 8.

24. See, for example, Gámez Montalvo, *Régimen jurídico de la mujer*, and Arauz Mercado, *La protección jurídica de la mujer*. For other examples, primarily focused on women in medieval England, see the essays in Noël James Menuge, ed., *Medieval Women and the Law* (Woodbridge: Boydell, 2000).

25. Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423* (Ithaca, N.Y.: Cornell University Press, 2003).

26. Carol Lansing, “Concubines, Lovers, Prostitutes: Infamy and Female Identity in Medieval Bologna,” in *Beyond Florence: The Contours of Medieval and Early Modern Italy*, ed. Paula Findlen, Michelle M. Fontaine, and Duane J. Osheim (Stanford, Calif.: Stanford University Press, 2003), 85–100.

27. Lansing, “Concubines, Lovers, Prostitutes,” 90–91.

28. James Fentress and Chris Wickham have commented on the role of forgetting as intrinsic to the formation of memory, both individual and social—a phenomenon I believe applies equally well to understanding law; see James Fentress and Chris Wickham, *Social Memory: New Perspectives on the Past* (Oxford: Blackwell, 1992), esp. 2–7, 73–74. Also influential in my approach to these sources is Erving Goffman’s classic description of “framing mechanisms” as a means of sorting ideas and events into useful categories for analysis: Goffman, *Frame Analysis: An Essay on the Organization of Experience* (Cambridge, Mass.: Harvard University Press, 1974), esp. 21–39 and 124–55.

29. Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth-Century France* (Stanford, Calif.: Stanford University Press, 1987), 5–25.

30. Robin Chapman Stacey, *Dark Speech: The Performance of Law in Early Medieval Ireland* (Philadelphia: University of Pennsylvania Press, 2007), 15–50.

31. Sandy Bardsley, *Venomous Tongues: Speech and Gender in Late Medieval England* (Philadelphia: University of Pennsylvania Press, 2006); Bernard Capp, *When Gossips Meet: Women, Family, and Neighbourhood in Early Modern England* (Oxford: Oxford University Press, 2003).

32. This is not to argue that the identities that emerged from this use were authentic. Historians covering a variety of periods within the Middle Ages and the early modern period have pointed out the role litigation played in identity formation, some even going so far as to say that courtroom actions at times reified a set of identities that may not have been there before. Tommaso Astarita, *Village Justice: Community, Family, and Popular Culture in Early Modern Italy* (Baltimore: Johns Hopkins University Press, 1999); Paul R. Hyams, *Rancor and Reconciliation in Medieval England* (Ithaca, N.Y.: Cornell University Press, 2003); Lansing, “Concubines, Lovers, Prostitutes”; Smail, *The Consumption of Justice*, 5–23.

CHAPTER 1. DRAWING BOUNDARIES:

WOMEN IN THE LEGAL LANDSCAPE IN THE AGE OF JAUME II

1. ACA, C, Processos en quart, 1303-F, second part, 4r–v (1299–1305).

2. Cod. 1.48.1: “Nemo iudex officialem ad eam domum, in qua mater familias agit, cum aliquo praecepto existimet esse mittendum, ut eandem in publicum protrahat, cum certum sit debita eius, quae intra domum considerato sexu semet contineat, domus eius vel cuiuscumque rei habita distractione, publicis necessitatibus posse servari. Quod si quis in publicum matrem familias posthac crediderit protrahendam, inter maximos reos citra ullam indulgentiam capitali poena plectetur.”

3. ACA, C, Processos en quart, 1303-F, first part, iv (1299–1305).

4. Cod. Theod. 1.22.1.

5. ACA, C, Processos en quart, 1303-F, first part, 3r (1299–1305).

6. For a general English-language history of the medieval Crown of Aragon (focusing primarily on political and institutional developments), see Thomas N. Bisson, *The Medieval Crown of Aragon: A Short History* (Oxford: Oxford University Press, 1986).

7. Bisson, *The Medieval Crown of Aragon*, 19–22.

8. Although Archibald Lewis’s argument that “we can clearly view this whole region [Catalonia and southern France] as an area enjoying a civilization generally similar in character in every portion of it, and different from that found in Northern France” is no longer widely accepted without amendment (especially with regard to his overestimation of the cultural unity of the northern French regions with which he contrasts the Pyrenean counties), his book on the subject offers many examples of the shared history and culture of the trans-Pyrenean regions. Lewis, *The Development of Southern French and Catalan Society, 718–1050* (Austin: University of Texas Press, 1965), esp. 69–91, quote at 401. See also Pierre Bonnassie, *La Catalogne au tournant de l’an mil* (Paris: Albin Michel, 1990), 163–65.

9. Bisson, *The Medieval Crown of Aragon*, 38–39; Joseph F. O’Callaghan, *A History of Medieval Spain* (Ithaca, N.Y.: Cornell University Press, 1975), 249–53, quote at 253. Damian J. Smith, *Innocent III and the Crown of Aragon: The Limits of Papal Authority* (Burlington, Vt.: Ashgate, 2005) gives a summary of papal-Aragonese relations during this period; see esp. chap. 4, “From Las Navas to Muret,” III–42.
10. O’Callaghan, *A History of Medieval Spain*, 362–63.
11. Jaume II’s wives included Blanche of Anjou (m. 1295–1310) and Marie de Lusignan (m. 1315–22); see Bisson, *The Medieval Crown of Aragon*, 92–95. The marital alliances with southern French lords were important, but their significance should not be overexaggerated, as these were only two of a total of four marriages (the other two to a Castilian and a Catalan, respectively) and several long-term extramarital liaisons.
12. O’Callaghan, *A History of Medieval Spain*, 245–49.
13. Maria Teresa Ferrer i Mallol, *Entre la paz y la guerra: la Corona catalono-aragonesa y Castilla en la Baja Edad Media* (Barcelona: CSIC, 2005), esp. 291–328; see also Bisson, *The Medieval Crown of Aragon*, III–16.
14. Bisson, *The Medieval Crown of Aragon*, 86–96.
15. Alberto Boscolo, “La mutación del siglo XIV en el Mediterráneo,” in *La mutación de la segunda mitad del siglo XIV en España*, ed. Federico Udina i Martorell, Cuadernos de historia 8 (Madrid: CSIC, 1977), 15–23. For more detailed treatments of specific aspects of this topic, see the essays in Maria Teresa Ferrer i Mallol, ed., *Els catalans a la Mediterrània oriental a l’Edat Mitjana* (Barcelona: CSIC, 2003).
16. Jesús Lalinde Abadía, *La Corona de Aragón en el Mediterráneo medieval (1229–1479)* (Zaragoza: CSIC, 1979), 199–268.
17. In Aragon, the *uniones* were at their height of influence from 1283 to 1286, then declined during the reign of Jaume II, becoming an important political force again only in the mid-fourteenth century, during the reign of Pere III. Bisson, *The Medieval Crown of Aragon*, 88–92, 107–9; Luis González Antón, *Las uniones aragonesas y las Cortes del Reino (1283–1301)* (Zaragoza: CSIC, 1975), I: 345–62. For a brief history of the Valencian *Unión*, focusing primarily on the second unionist period during the reign of Pere III and the conflicts in and around the year 1347, see Mateu Rodrigo Lizondo, “La Unión valenciana y sus protagonistas,” *Ligazas* 7 (1975): 133–66.
18. Manlio Bellomo, *The Common Legal Past of Europe, 1000–1800*, trans. Lydia G. Cochrane (Washington, D.C.: Catholic University of America Press, 1995), 58–77.
19. Peter Stein, *Roman Law in European History* (Cambridge: Cambridge University Press, 1999), 43–48.
20. For a detailed description of canon law before Gratian, see James A. Brundage, *Medieval Canon Law* (London: Longman, 1995), esp. 22–43, and Lotte Kéry, *Canonical Collections of the Early Middle Ages (ca. 400–1140): A Bibliographical Guide to the Manuscripts and Literature* (Washington, D.C.: Catholic University of America Press, 1999).
21. For Gratian’s *Decretum* and its commentators, see Katherine Christensen’s “Introduction” to Gratian, *The Treatise on Laws (Decretum DD. 1–20) with the Ordinary Gloss*, ed. and trans. Augustine Thompson, O.P. and James Gordley (Washington, D.C.: Catholic

University of America Press, 1993), esp. xii–xviii; also Anders Winroth, *The Making of Gratian's Decretum* (Cambridge: Cambridge University Press, 2000), esp. 144–45, 175–92.

22. Stein, *Roman Law*, 61.

23. Bellomo, *The Common Legal Past of Europe*, 78–111; for Iberia in particular, see 99–101.

24. The literature on the subject of Visigothic law in general, and its relation to Roman law in particular, is vast, if somewhat out of historiographic fashion. For secondary literature in English, see P. D. King, *Law and Society in the Visigothic Kingdom* (Cambridge: Cambridge University Press, 1972); Roger Collins, “*Sicut Lex Gothorum Continet*: Law and Charters in 9th- and 10th-Century León and Catalonia,” *English Historical Review* 100 (1985): 489–512; King, “Visigothic Law and Regional Custom in Disputes in Early Medieval Spain,” in *The Settlement of Disputes in Early Medieval Europe*, ed. Wendy Davies and Paul Fouracre (Cambridge: Cambridge University Press, 1986), 86–100; Marie A. Kelleher, “Boundaries of Law: Code and Custom in the Legal Practice of Early Medieval Catalonia,” *Comitatus* 30 (1999): 1–10; and Eelco Nicolaas van Kleffens, *Hispanic Law Until the End of the Middle Ages* (Edinburgh: Edinburgh University Press, 1968), 79–80. For examples of the more abundant (and detailed) work on this subject by peninsular scholars, see José María Font y Rius, “El desarrollo general del derecho en los territorios de la Corona de Aragón (siglos XII–XIV),” in *VII Congreso de Historia de la Corona de Aragón*, vol. 1 (Barcelona: F. Rodríguez Ferran, 1964), 289–326; and Aquilino Iglesia Ferreirós, “La creación del derecho en Cataluña,” *AHDE* 47 (1977): 99–423. See also José María Font y Rius [Josep Maria Font i Rius], “La recepción del derecho romano en la Península Ibérica durante la Edad Media,” in *Recueil de mémoires et travaux publiés par la Société d'histoire du droit et des institutions des anciens pays du droit écrit* 6 (1967): 87–90. For the later legacy of Visigothic law, see Walter Kienast, “La pervivencia del derecho godo en el sur de Francia y Cataluña,” *Boletín de la Real Academia de Buenas Letras de Barcelona* 35 (1973–74): 265–85.

25. Donald J. Kagay, *The Usatges: The Fundamental Law of Catalonia* (Philadelphia: University of Pennsylvania Press, 1994), 16–19, n. 57.

26. While the *Usatges* were influential, they were never applied generally throughout Catalonia, which remained a patchwork of *fueros* (compilations of local or regional laws), customs, and privileges that applied only to a single town and the smaller settlements on its periphery. Some, like the *Consuetudines dioecesis gerundensis*, were almost purely customary in origin; see Jaime Cots y Gorchs, ed., *Consuetudines dioecesis gerundensis: estudio y transcripción según los mm. ss. más antiguos del siglo XV* (Barcelona: Casulleras, 1929), 5–6. The Code of Tortosa, on the other hand, seems to have been a mixture of Visigothic and Roman law, with lesser elements of both canon law and the “feudal” law of the *Usatges* of Barcelona; see Antonio Aunós Pérez, *El derecho catalán en el siglo XIII* (Barcelona: Helios, 1926), 46. The romanizing *Costums* of Lleida (1228) even treated the *Corpus iuris civilis* as living law; see Antonio Hernandez Palmes, “El derecho civil en las ‘Consuetudines Ilerdenses,’ de Guillermo Botet (s. XIII),” *Ilerda* 46 (1985): 67–79; and Víctor Ferro, *El dret públic català: les institucions a Catalunya fins al Decret de Nova Planta* (Vic: Eumo, 1987), 315–16.

27. Font y Rius, “El desarrollo general del derecho,” 295–307.

28. For examples, see Luis Parral Cristobal, *Fueros, observancias, actos de Corte, usos y costumbres . . . del reino de Aragón* (Zaragoza: tip. Mariano Salas, 1907), v.

29. The romanizing flavor of the 1247 *Fueros* of Aragón probably owes much to the fact that their compiler Vidal de Cañellas was himself a Bologna-trained jurist; see Alfonso Guallart de Viala, *El derecho penal histórico de Aragón* (Zaragoza: CSIC, 1977), 21–54; also Font y Rius, “La recepción del derecho romano,” 98–99. Even after the adoption of the 1247 collection, known as the “compilation of Huesca,” some local law codes persisted—the *Fueros* of Teruel, for example, retained their influence in lower Aragón for centuries—but these were marginal to the central code. Font y Rius, “El desarrollo general del derecho,” 307–11.

30. Font y Rius, “El desarrollo general del derecho,” 305–6.

31. Font y Rius, “El desarrollo general del derecho,” 322–23.

32. Pierre Guichard, “Alcaidia et ‘coutume d’Espagne’ dans le royaume de Valence et les états de la couronne d’Aragón au Moyen Âge,” *Annales de la Faculté des Lettres et Sciences Humaines de Nice* 46 (1983): 250; Font y Rius, “El desarrollo general del derecho,” 250–51; Font y Rius, “La recepción de del derecho romano,” 97–98.

33. Elena Lourie, “Mafiosi and Malsines: Violence, Fear, and Faction in the Jewish Aljamas of Valencia in the Fourteenth Century,” in *Crusade and Colonisation: Muslims, Christians and Jews in Medieval Aragón* (Aldershot: Variorum, 1990), 69–102.

34. Brian Catlos, *The Victors and the Vanquished: Christians and Muslims of Catalonia and Aragón, 1050–1300* (Cambridge: Cambridge University Press, 2004), 162–78. Catlos also notes that, over the course of the high Middle Ages, Christian courts came to claim (though only unevenly apply) jurisdiction over all criminal (as opposed to civil) cases involving Muslims.

35. For the legal relationship between the Christian authorities and the Muslim *aljamas* at various periods in the Crown of Aragón’s history, see John Boswell, *The Royal Treasure: Muslim Communities Under the Crown of Aragón in the Fourteenth Century* (New Haven, Conn.: Yale University Press, 1977), esp. 4–23, 78–86; and Brian Catlos, *The Victors and the Vanquished*, 162–78, and “Secundum suam zunam: Muslims and the Law in the Aragonese ‘Reconquest’,” *Mediterranean Studies* 7 (1998): 13–26. For works dealing with royal law as it operated in the Crown’s Jewish communities over the high and later medieval centuries, see David Abulafia, “The Servitude of Jews and Muslims in the Medieval Mediterranean: Origins and Diffusion,” *Mélanges de l’École française de Rome—Moyen Âge* 112 (2000): 705–7; Yom Tov Assis, *The Golden Age of Aragonese Jewry: Community and Society in the Crown of Aragón, 1213–1327* (London: Littman Library of Jewish Civilization, 1997), 135; Asunción Blasco Martínez, “El adulterio de Doña Lumbre, Judía de Zaragoza,” *Michael* 11 (1989): 100.

36. For interconfessional sexuality, see below, Chapter 3. For a detailed treatment of this subject in the context of interconfessional relations in general, see David Nirenberg, *Communities of Violence: Persecution of Minorities in the Middle Ages* (Princeton, N.J.: Princeton University Press, 1998), esp. chap. 5, “Sex and Violence Between Majority and Minority,” 127–65; also Mark Meyerson, “Prostitution of Muslim Women in the Kingdom of

Valencia: Religious and Sexual Discrimination in a Medieval Plural Society,” in *The Medieval Mediterranean: Cross-Cultural Contacts*, ed. Marilyn Chiat and Kathryn Reyerson (St. Cloud, Minn.: North Star Press of St. Cloud, 1988), 87–95. For slavery and gender in the high and later medieval Crown of Aragon, see Debra Blumenthal, *Enemies and Familiars: Slavery and Mastery in Fifteenth-Century Valencia* (Ithaca, N.Y.: Cornell University Press, 2009), as well as many of the essays in Maria Teresa Ferrer i Mallol and Josefina Mutgé i Vives, eds., *De l'esclavitud a la llibertat: esclaus i lliberts a l'Edat Mitjana* (Barcelona: CSIC, 2000).

37. Font y Rius, “La recepción del derecho romano,” 89–91. By the fourteenth century, Catalans formed one of only three “nations” at Montpellier; see Hastings Rashdall, *The Universities of Europe in the Middle Ages*, rev. ed., ed. F. M. Powicke and A. B. Emden, vol. 2 (Oxford: Clarendon, 1936), 132.

38. Font y Rius, “El desarrollo general del derecho,” 295–97; Josep M. Mas i Solench, *Història i dret a Catalunya* (Lleida: Pagès, 2003), 60.

39. See refs in n. 17.

40. *Crònica de Jaume I*, cap. 395, as cited in Font y Rius, “La recepción del derecho romano,” 93.

41. *CADC*, *Prag.* 2.3 (1243) and *Sup.* 1.8 (1251).

42. Font y Rius, “El desarrollo general del derecho,” 297–98; Mas i Solench, *Història i dret a Catalunya*, 59.

43. Francisco A. Roca Traver, *El justicia de Valencia (1238–1321)* (Valencia: Ayuntamiento de Valencia, 1970), 102.

44. For more on equity and its relationship to the *ius commune*, see Bellomo, *The Common Legal Past of Europe*, 160–62.

45. *CADC*, *Const.* 2.6.4 (1359).

46. Josep Maria Pons i Guri, “Constitucions de Catalunya,” in *Recull d'estudis d'història jurídica Catalana*, vol. 3 (Barcelona: Fundació Noguera, 1989), 65–71.

47. Guallart de Viala, *El derecho penal*, 43–58.

48. Pons i Guri, “Constitucions de Catalunya,” 65–71.

49. For numerous examples in translation, see the sources in Judith Evans Grubbs, ed., *Women and the Law in the Roman Empire: A Sourcebook on Marriage, Divorce, and Widowhood* (London: Routledge, 2002), esp. 46–55.

50. Gaius, *Inst.* 1.144, as reproduced in Grubbs, ed., *Women and the Law in the Roman Empire*, 25.

51. Gaius, *Inst.* 1.190, as reproduced in Grubbs, *Women and the Law in the Roman Empire*, 29.

52. Jane Gardner, *Women in Roman Law and Society* (Bloomington: University of Indiana Press, 1986), 11–22.

53. Suzanne Dixon, “*Infirmis Sexus*: Womanly Weakness in Roman Law,” *Tijdschrift voor Rechtsgeschiedenis/Legal History Review* 52 (1984): 343–71.

54. Ulpian makes reference to the *infirmis* of the female sex (Ulpian, *Regulae* 11.1, as reproduced in Grubbs, *Women and the Law in the Roman Empire*, 29), as do later passages in the Theodosian Code (*Cod. Theod.* 12.1.137.1 and 9.14.3.2).

55. Judith Evans Grubbs, *Law and Family in Late Antiquity: The Emperor Constantine's Marriage Legislation* (Oxford: Clarendon, 1995), 321–30.

56. Dig. 3.1.1.5.

57. Dig. 26.10.1.7.

58. Cod. 2.12.21.

59. For detailed discussion of the issue of women in canon law, see Daniela Müller, “*Vir caput mulieris*: Zur Stellung der Frau im Kirchenrecht unter besonderer Berücksichtigung des 12. und 13. Jahrhunderts,” in *Vom mittelalterlichen Recht zur neuzeitlichen Rechtswissenschaft: Bedingungen, Wege, und Probleme der europäischen Rechtsgeschichte*, ed. Winifred Trusen and Norbert Brieskorn (Paderborn: Schöningh, 1994), 223–45; also, two works by René Metz, “Recherches sur la condition de la femme selon Gratien,” *Studia Gratiana* 12 (1967): 379–96; and “Le statut de la femme en droit canonique medieval,” *Recueils de la société Jean Bodin* 12 (1962): 59–113.

60. C. 33 q. 7 d.p.c. 17; an etymology lifted from the Pseudo-Ambrosian commentaries on St. Paul's epistles.

61. C. 15 q. 3 praefatio par. 2.

62. C. 33 q. 5 c. 15; see also 1 Cor. 11:3.

63. C. 15 q. 3 praefatio paras. 1 and 2. Gratian here is anticipating a counterargument about female judges; the larger point of this *quaestio*, however, concerns women as priests or deacons.

64. C. 33 q. 5 d.p.c. 11 and d.p.c. 20; see also C. 33 q. 5 c. 20.

65. Johannes Teutonicus, *Glossa ordinaria* C. 33 q. 5 c. 12, v. *est ordo naturalis*; possibly influenced by Rufinus (d. 1192) who based his agreement of exclusively male authority on the text in Genesis where God declares that Eve be subject to her husband (Rufinus, to C. 33 q. 5 c. 15 v. *cum caput*).

66. Rolandus, *Summa Magistri Rolandi*, to C. 33 q. 5 c. 17, v. *Manifestum est*.

67. X 5.33.13.

68. X 5.40.10.

69. X 2.20.3.

70. X 2.20.33. See below, “Common Knowledge in the Courtroom,” for reference to particular circumstances under which courts drew on female knowledge.

71. VI 2.1.2.

72. VI 2.1.2.

73. C. *Tort.* V.1.16; *OAM* 44 (1301–7); *FVV*.I.17 and V.III.5.

74. *FVIV*.XIX.1 and 28. These provisions were not unique to Valencia or the Crown of Aragon but rather were common in high and later medieval legal codes throughout the continent. For a more detailed argument on women and property, see below, Chapter 2.

75. *FA* 619.

76. *FVI*.VII.3 for imprisonment, and *IX*.XXVIII.7 for segregation; as cited in Pedro López Elum and Mateu Rodrigo Lizondo, “La mujer en el código de Jaime I de los *Furs de Valencia*,” in *Las mujeres medievales y su ámbito jurídico* (Madrid: Universidad Autónoma de Madrid, 1983), 131–32.

77. *C. Tort.* IV.7.1.

78. *CADC, Const.* IX.15.18 (*usatge* “Unaquaeque mulier”).

79. *FVIV.V.*1–4.

80. Thomas Kuehn, “Daughters, Mothers, Wives, and Widows: Women as Legal Persons,” in *Time, Space, and Women's Lives in Early Modern Europe*, ed. Anne Jacobson Schutte, Thomas Kuehn, and Silvana Seidel Menchi (Kirksville, Mo.: Truman State University Press, 2001): 97–115; see esp. 106–7, 114–15.

81. Gratian devoted all of *causae* 27–36 of his *Decretum* to the subject, and marriage takes up the entire fourth book of the decretal collections. Antonio García y García, “Derecho canónico y vida cotidiana en el medievo,” *Revista Portuguesa de História* 24 (1988): 191–92.

82. Ferro, *El dret públic català*, 129–32. The *Liber sextus* declared that disputes over jurisdiction be resolved by the ecclesiastical authority in question (VI 5.11.12), but this provision was never applied in the Crown of Aragon.

83. A custom established by Jaume II. *CADC Const.* 1.36.1 (1299).

84. Ferro, *El dret públic català*, 61–64, 117–18.

85. Josefina Mutgé i Vives, *La ciudad de Barcelona durante el reinado de Alfonso el Benigno (1327–1336)* (Barcelona: CSIC, 1987), 182.

86. Ferro, *El dret públic català*, 110–14; for probable origin, see Cod. 3.14. Evocation was also used in civil cases with more than 1,000 *lliures* at stake and in all criminal cases for which the crime had taken place in the *vergueria* where Audiencia was at that time (normally Barcelona) or in any case touching on royal officials or jurisdiction.

87. Ferro, *El dret públic català*, 115–18. Whether presided over by the king himself or by his lieutenant-general, the legal pronouncements of the Audiencia carried the weight of royal sentences. Thus, unlike verdicts of inferior tribunals, which could be appealed on the grounds of miscarriage of justice and mitigated, overturned, or pardoned by a royal court, verdicts of the Audiencia were not normally subject to appeal, as there was no higher secular authority.

88. The count-kings' advances in the struggle to assert their authority—including judicial authority—in the face of opposition from both barons and municipalities was at its height during the reign of Jaume II, but continued throughout the fourteenth century and into the fifteenth; see Flocel Sabaté, “El poder real entre el poder municipal i el poder baronial a la Catalunya del segle XIV,” in *El poder real en la Corona de Aragón (siglos XIV–XVI): XV Congreso de Historia de la Corona de Aragón* (Zaragoza: Gobierno de Aragón, 1996), vol. 2, 327–42; also Jesús Lalinde Abadía, *La jurisdicción real inferior en Cataluña (Corts, veguers, batlles)* (Barcelona: Ayuntamiento de Barcelona, Museo de Historia de la Ciudad, 1966), 81–82 and 237–44. For discussions of earlier, more localized jurisdiction in Catalonia, see Bisson, *The Medieval Crown of Aragon*, 23–28; Paul Freedman, *The Origins of Peasant Servitude in Medieval Catalonia* (Cambridge: Cambridge University Press, 1991), esp. 16–17, 56–88; Adam Kosto, *Making Agreements in Medieval Catalonia: Power, Order, and the Written Word, 1000–1200* (Cambridge: Cambridge University Press, 2001), 3–23; and Josep Maria Pons i Guri, “Compendi sobre els drets dels castells termenats (segles

XIII–XV),” in *Recull d'estudis d'història jurídica catalana* (Barcelona: Fundació Noguera, 1989), 3: 339–52, esp. 344–47.

89. The *batlles* first appeared sometime in the tenth century as local officials responsible for administering comital or seigniorial properties and rents, and with some additional judicial responsibilities, often held in conjunction with the local seigniorial authority. Ferro, *El dret públic català*, 123–25.

90. Lalinde Abadía, *La jurisdicción real inferior*, 125–26; Mutgé i Vives, *La ciudad de Barcelona*, 198–202.

91. Lalinde Abadía, *La jurisdicción real inferior*, 93–96.

92. Lalinde Abadía, *La jurisdicción real inferior*, 227–29.

93. Lalinde Abadía, *La jurisdicción real inferior*, 220–21; Mutgé i Vives, *La ciudad de Barcelona*, 193–94.

94. Ludwig Klüpfel, *Verwaltungsgeschichte des Königreichs Aragon zu Ende des 13. Jahrhunderts* (Berlin, Stuttgart, and Leipzig: W. Kohlhammer, 1915), 95–97; Antonio Ubieto Arteta, *Historia de Aragon*, vol. 3, *Divisiones administrativas* (Zaragoza: Anubar Ediciones, 1983), 97–120.

95. Ubieto Arteta, *Historia de Aragon*, 126–33.

96. Klüpfel, *Verwaltungsgeschichte des Königreichs Aragon*, 98–99; Francisco Luis Pacheco Caballero, “Potestad regia, justicia y jurisdicción en el reino de Aragón (Edades Media y Moderna),” in *El dret comú i Catalunya. Actes del VI Simposi Internacional*, ed. Aquilino Iglesia Ferreirós (Barcelona: Fundació Noguera, 1997), esp. 229–37.

97. Mark D. Meyerson, *The Muslims of Valencia in the Age of Fernando and Isabel: Between Coexistence and Crusade* (Berkeley: University of California Press, 1991), 15–16, 206; Pablo Pérez García, “Origen y configuración de una magistratura urbana de la Valencia foral: El Justicia Criminal,” *Estudis: Revista de Historia Moderna* 13 (1987): 42–43; Leopoldo Piles Ros, *Estudio documental sobre el Bayle General de Valencia, su autoridad y jurisdicción* (Valencia: CSIC, 1970), 11–24, 112–14. Meyerson also notes that, in the first few decades after the thirteenth-century Christian conquest of Valencia, Jews served as *bayles* in some Valencian communities; the office was only reserved for Christians after 1283. Mark D. Meyerson, *Jews in an Iberian Frontier Kingdom: Society, Economy, and Politics in Morvedre, 1248–1391* (Leiden: Brill, 2004), 21–50.

98. Pérez García, “Origen y configuración,” 27–41, 51–61; Josep María Font i Rius, “Valencia y Barcelona en los orígenes de su régimen municipal,” in *Estudis sobre els drets i institucions locals en la Catalunya medieval* (Barcelona: Universitat de Barcelona, 1985), 643–47; Klüpfel, *Verwaltungsgeschichte des Königreichs Aragon*, 90–92; Roca Traver, *El justícia de Valencia*, 77–78.

99. José Vicente Cabezuolo Pliego, *La curia de la procuración: estructura de una magistratura medieval Valenciana* (Alicante: Instituto de Cultura Juan Gil-Albert, 1998), 103–8.

100. The general statements on civil procedure in these pages have been drawn largely from the accounts in Linda Fowler-Magerl, *Ordines Iudicarii and Libelli de Ordine Iudiciorum (From the Middle of the Twelfth Through the End of the Fifteenth Century)*, *Typologie des sources du moyen âge occidental* 63 (Turnhout: Brepols, 1994), 38–45, and James A.

Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts* (Chicago: University of Chicago Press, 2008), 157–61. Brundage's descriptions are largely based on the 1216 *Ordo iudiciarius* of Tancred of Bologna; Fowler-Magerl's more detailed description also references numerous later procedural manuals written by canonists as well as civilians.

101. ACA, C, Processos en quart 1302B, 2r–3r (1304/5).

102. ACA, C, Processos en quart 1302B, 3r–4r (1304/5). According to Tancred's *Ordo iudiciarius*, both parties could rebut—processes known as the *triplicatio* and *quadruplicatio*; however, as James Brundage notes, these two options (especially the latter) were rarely actually exercised. Brundage, *Medieval Origins of the Legal Profession*, 157–58.

103. ACA, C, Processos en quart 1302B, 4r–4v (1304/5).

104. ACA, C, Processos en quart 1302B, 5r–9v (1304/5).

105. ACA, C, Processos en quart 1302B, 10r–19r (1304/5).

106. Brundage, *Medieval Origins of the Legal Profession*, 159–60.

107. ACA, Processos en quart 1302B, 19v–20r (1304/5).

108. Brundage, *Medieval Origins of the Legal Profession*, 160–61; Fowler-Magerl, *Ordines Iudicarii*, 47–49.

109. ACA, C, Processos en quart 1302B, 4r (1304/5).

110. ACA, C, Processos en quart 1302B, 19r (1304/5).

111. Probably based on Pope Clement V's early fourteenth-century decretal *Saepe* (Clem. 5.11.2); for this and a further discussion of summary procedure, see Fowler-Magerl, *Ordines Iudicarii*, 53–55. In 1381, about half a century after the cases discussed in this chapter, Pere III made summary procedure obligatory in the secular courts of the Crown of Aragon and required that all cases be resolved within a month's time; *FA* 227.

112. The exceptions to this rule were the *justicias* of Valencia, who maintained separate courts for criminal and civil matters; see Klüpfel, *Verwaltungsgeschichte des Königreichs Aragon*, 91.

113. Fowler-Magerl, *Ordines Iudicarii*, 49–52. For most criminal cases, the usual procedure would have been either *denunciatio* or *accusatio*. In *denunciatio*, an accuser was required first to approach the wrongdoer and give him or her an opportunity to correct the wrong before proceeding before a judge. More common in secular courts was *accusatio*, in which an accuser could simply initiate proceedings without first consulting with the accused. To employ the *accusatio*, however, the accuser had to promise a forfeit; that is, if the accused was acquitted, the accuser would have to undergo whatever penalty the accused would have been subject to if found guilty. See Karl Blaine Shoemaker, "Criminal Procedure in Medieval European Law: A Comparison Between English and Roman-Canonical Developments After the IV Lateran Council," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte—Kanonistische Abteilung* 174 (1999): 186–87. Tancred's *Ordo iudiciarius* also treats a procedure known as *exceptio*, but, as Shoemaker has noted, "Because *exceptio* proceedings were relevant only where criminal acts became an issue, not in and of themselves, but in the course of a separate suit, they can be set aside here" (n. 59).

114. English-language works focusing on this aspect of *inquisitio* date back at least as far as Henry Charles Lea's classic *A History of the Inquisition of the Middle Ages* (New York: Harper, 1888) and to the more recent overview by Edward Peters, *Inquisition* (New York: Free Press, 1988).

115. Lotte Kéry, "Inquisitio—denunciatio—exceptio: Möglichkeiten der Verfahrenseinleitung im Dekretalenrecht," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte—Kanonistische Abteilung* 87 (2001): 227–29.

116. C.2 q.4 d.p.c. 1.

117. Richard M. Fraher, "Conviction According to Conscience: The Medieval Jurists' Debate Concerning Judicial Discretion and the Law of Proof," *Law and History Review* 7 (1989): 24.

For later medieval procedural rules, see Fowler-Magerl, *Ordines Iudicarii*, esp. 34–35.

118. James A. Brundage, "Proof in Canonical Criminal Law," *Continuity and Change* 11 (1996): 329–39.

119. X 5.34.10.

120. X 5.3.31.

121. Winfried Trusen, "Der Inquisitionsprozeß: Seine historischen Grundlagen und frühen Formen," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte—Kanonistische Abteilung* 74 (1988): 230. Because it violated Gratian's *ordo iuris*, its use tended to be limited to the investigation of crimes for which usual procedural rules would not suffice—generally "hidden" crimes like clerical sexuality and heresy. Brundage, "Proof in Canonical Criminal Law," 332–35.

122. X 5.3.31.

123. X 5.1.17.

124. Sinibaldus Fliscus (Innocent IV), *Commentaria. Apparatus in V libros decretalium* (Frankfurt: [s.n.], 1570; repr. Frankfurt: Minerva, 1968), 490.

125. For a brief overview of the medieval use of this concept, see Thelma Fenster and Daniel Lord Smail, eds., *Fama: The Politics of Talk and Reputation in Medieval Europe* (Ithaca, N.Y.: Cornell University Press, 2003), especially the editors' introduction to the volume, 1–11.

126. ACA, C, Processos en foli 3/2, 7v (1296).

127. ACA, C, Processos en foli 3/2, 4r (1296).

128. ACA, C, Processos en foli 3/2, 5v (1296). Similar questions and answers can be found in ecclesiastical courts: respondents to parish visitations referred to *fama* as "illud quod omnes gentes dicunt" (ADB, Visites pastorales II, 54v–56v).

129. ACA, C, Processos en foli 126/19 (1378).

130. *Mala fama* in this context refers to *infamia facti* or social infamy, which could spring from rumor or scandal, rather than *infamia iuris* or legal infamy—a concept that had its roots in Roman law and refers to a penal sanction, applied either as a stand-alone penalty or added to a corporal or financial sanction, and which will be dealt with below. Trusen, "Der Inquisitionsprozeß," 180.

131. Isidore, *Etymologies* vol. 1, 5.27.25–27; see also Edward Peters, "Wounded Names: The Medieval Doctrine of Infamy," in *Law in Mediaeval Life and Thought*, ed. Edward B.

King and Susan J. Ridyard, *Sewanee Mediaeval Studies* 5 (Sewanee, Tenn.: Press of the University of the South, 1990), 45.

132. Joan Anton Rabella i Ribas, *Un matrimoni desavingut i un gat metzinat: procés criminal barceloní del segle XIV* (Barcelona: Institut d'Estudis Catalans, 1998), 108–11.

133. Sinibaldus Fliscus (Innocent IV), *Commentaria*, 490.

134. X 5.3.31.

135. Kéry, “Inquisitio—denunciatio—exceptio,” 239–43. See also Henry Ansgar Kelly, “Inquisition and the Prosecution of Heresy: Misconceptions and Abuses,” *Church History* 58 (1989): 446. In his study of the legal culture of high medieval Marseille, Daniel Lord Smail has noted that most civil proceedings (two-thirds) initiated from denunciations from private citizens or from officials investigating a charge that was “public fame,” rather than any initiative on the part of the courts themselves. Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423* (Ithaca, N.Y.: Cornell University Press, 2003), 80.

136. ACA, C, Processos en foli 126/19 (1378).

137. ACA, C, Processos en foli 3/2, 3v ff (1296).

138. Chris Wickham places the origins of *fama*'s probative value at the twelfth century, coinciding with the early elaboration of Romano-canonical procedure. Wickham, “*Fama* and the Law in Twelfth-Century Tuscany,” in *Fama*, ed. Fenster and Smail, 16.

139. Peter Landau, *Die Entstehung des kanonischen Infamiebegriffs von Gratian bis zur Glossa ordinaria* (Cologne: Böhlau, 1966), 3–4. See also Peters, “Wounded Names,” 69. Historians have debated as to whether *fama*-as-reputation was fixed or mutable. On the one hand, the link between *fama* and talk meant that a person's *fama* might continually adjust throughout that person's lifetime. *Fama* was thus not a fact but a process, subject to changing opinions within a particular group or even competing versions of truth between two or more groups of people or contexts; see Thelma Fenster and Daniel Lord Smail, “Introduction,” to *Fama*, 3–6. On the other hand, it should be noted that the *infamia* of local reputation could have a more lasting harmful effect than *infamia* as legal status, as the latter could be removed; see Thomas Kuehn, “*Fama* as a Legal Status in Renaissance Florence,” in *Fama*, 32.

140. Shoemaker, “Criminal Procedure”; see also Paul R. Hyams, *Rancor and Reconciliation in Medieval England* (Ithaca, N.Y.: Cornell University Press, 2003), esp. 3–33, 191–212.

141. Barbara A. Hanawalt has even argued that reputation directly affected case outcomes, in that the criminal defendants most likely to be convicted were those community members who had been problems all along; see Hanawalt, “‘Of Good and Ill Repute’: The Limits of Community Tolerance,” in “*Of Good and Ill Repute*”: *Gender and Social Control in Medieval England* (Oxford: Oxford University Press, 1998), 10–11.

142. See Phillipp R. Schofield, “Peasants and the Manor Court: Gossip and Litigation in a Suffolk Village at the Close of the Thirteenth Century,” *Past & Present* 159 (1998): 28–29.

143. See Shoemaker, “Criminal Procedure,” esp. 175–78, 197–202.

144. X 5.1.24 at 12.

145. Thomas Kuehn, “*Fama* as a Legal Status,” 29. This opinion, while dominant, was far from unanimous. For a full discussion of the civilians’ debate, set in the context of an argument over judicial discretion, see Fraher, “Conviction According to Conscience,” 23–88.

146. ACA, C, Processos en foli 3/2 (1296).

147. James Brundage notes a wide variation in formal legal training a notary in the later medieval centuries might have received, “rang[ing] from the marginally literate to the profoundly learned,” according to background, environment, and particular duties that they were individually called upon to perform. Brundage, *Medieval Origins of the Legal Profession*, 400–401.

148. ACA, C, Processos en foli 3/2, 11–51 (1296).

149. ACA, C, Processos en foli 3/2, 12v–13r (1296).

150. See Judith Everard, “Sworn Testimony and Memory of the Past in Brittany, c. 1100–1250,” in *Medieval Memories: Men, Women and the Past, 700–1300*, ed. Elisabeth van Houts (London: Longman, 2001), 86–87; Smail, *The Consumption of Justice*, 226–39. See also Elisabeth Van Houts, *Memory and Gender in Medieval Europe, 900–1200* (Toronto: University of Toronto Press, 1999), 1–16.

151. ACA, C, Processos en foli 3/2, 21–v (1296).

152. Jacqueline Murray, “On the Origins and Role of ‘Wise Women’ in Causes for Annulment on the Grounds of Male Impotence,” *Journal of Medieval History* 16 (1990): 235–49.

153. ACA, C, Processos en quart 321/1333C, 21–3v (1327–33).

154. See, for example, Carol Lansing’s study of poor women in late medieval Bologna, where courts made a sharp distinction between young women of *bona fama* and those of *mala fama*, but court testimony indicates that these women’s neighbors believed that such judgments could be situational. Lansing, “Girls in Trouble in Late Medieval Bologna,” in *The Premodern Teenager: Youth in Society 1150–1650*, ed. Konrad Eisenbichler (Toronto: Centre for Reformation and Renaissance Studies, 2002), 293–309.

155. Kuehn, “*Fama* as a Legal Status,” 27–29.

156. Brundage, *Medieval Origins of the Legal Profession*, 161–62.

157. Brundage, *Medieval Origins of the Legal Profession*, 151–52.

158. ACA, C, Processos en quart, 1303-F, first part, 5v (1299–1305).

159. ACA, C, Processos en quart, 1303-F, first part, 6r (1299–1305).

160. ACA, C, Processos en quart, 1303-F, first part, 1v (1299–1305).

CHAPTER 2. THE POWER TO HOLD: WOMEN AND PROPERTY

1. ACA, C, Reg. 430, 251r (1329).

2. ACA, C, Reg. 436, 136v–137v (1329).

3. Sue Sheridan Walker, ed., *Wife and Widow in Medieval England* (Ann Arbor: University of Michigan Press, 1993), 1–16.

4. Most influentially, see Diane Owen Hughes, “From Brideprice to Dowry in

Mediterranean Europe,” *Journal of Family History* 3, 3 (1978): 262–96, esp. 285–88. For more recent studies focusing on the Mediterranean region in particular, see Maria Pont, “L’esponsalici dins la pràctica matrimonial catalana al segle XII,” *Medievalia* 4 (1983): 51–62; Christiane Klapisch-Zuber, “The ‘Cruel Mother’: Maternity, Widowhood, and Dowry in Florence in the Fourteenth and Fifteenth Centuries” in *Feminism and Renaissance Studies*, ed. Lorna Huston (Oxford: Oxford University Press, 1999), 186–202; Christine E. Meek, “Women, Dowries and the Family in Late Medieval Italian Cities,” in “*The Fragility of Her Sex?*” *Medieval Irishwomen in Their European Context*, ed. Christine Meek and Katharine Simms (Dublin: Four Courts Press, 1996), 136–52, esp. 146–48. Scholars have pointed out a different pattern in northern Europe, where customary law, rather than Roman law, was the basis for property regulations. For example, Martha C. Howell has argued that in late medieval Douai, the legal structures surrounding marital property became less nuclear, just as the households were becoming more so. Howell, *The Marriage Exchange: Property, Social Place, and Gender in Cities of the Low Countries, 1300–1550* (Chicago: University of Chicago Press, 1998), 10–45; see also Linda Guzzetti, “Women’s Inheritance and Testamentary Practices in Late Fourteenth- and Early Fifteenth-Century Venice and Ghent,” in *The Texture of Society: Medieval Women in the Southern Low Countries*, ed. Ellen E. Kittell and Mary A. Suydam (New York: Palgrave Macmillan, 2004), 79–108, esp. 80–86.

5. For the Roman law source of medieval dotal law, see Susan Treggiari, *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian* (Oxford: Clarendon, 1991), 327–65.

6. AMG, Pergamins 107 (1298).

7. AMG, Pergamins 112 (1299).

8. At this rate, it is understandable that not all families could afford to dower their daughters, and numerous sources from later medieval Valencia show evidence of innovative mechanisms to help dower young girls whose families could not afford it, mechanisms that over the course of the fourteenth century coalesced into the *loable confraria e almoina de les òrfenes a maridar*. Behind the formation of this organization lay the reality that possibilities for young girls in late medieval Valencia were generally limited to either marriage or the convent, and the inability to dower a daughter was one of the more common causes of girls’ entry into prostitution; see Jaime Castillo Sainz, “Asistencia, matrimonio e inserción social: ‘La loable confraria e almoina de les òrfenes a maridar,’” *Saitabi* 43 (1993): 1–11. Although dowry was not a prerequisite of marriage and no dowry, no matter how large, could render an invalid marriage valid (*FVV.V.40*), the fact that charitable organizations arose to dower poor girls as an alternative to prostitution suggests that marriage was linked strongly with the property that a woman brought as her contribution to her new household, and that by the later Middle Ages the marriage prospects of a girl without a dowry were slim.

9. AMG, Pergamins 169 (1318).

10. The contents of the chests are generally not specified—see, for example, AMG, Pergamins 169 (1318), 251 (1331), and 267 (1333).

11. 25 and 441 cases analyzed respectively. Jaume Codina, *Contractes de matrimoni al delta del Llobregat (segles XIV a XIX)* (Barcelona: Fundació Noguera, 1997), 255–56.

12. Rebecca Lynn Winer, *Women, Wealth, and Community in Perpignan, c. 1250–1300: Christians, Jews, and Enslaved Muslims in a Medieval Mediterranean Town* (Burlington, Vt.: Ashgate, 2006), 32.

13. For dowry inflation in Valencia, see Castillo Sainz, “Asistencia, matrimonio e inserción social,” 1–11.

14. Dowries of *honrats* (leading citizens, including both hereditary nobility and the merchant elite) were considerably higher than those of artisan or laboring-class women, sometimes over 1,000 pounds. Dana Wessell Lightfoot, “Negotiating Agency: Labouring-Status Wives and Their Dowries in Early Fifteenth-Century Valencia” (Ph.D. dissertation, University of Toronto, 2005), 82–98.

15. Winer, *Women, Wealth, and Community*, 28; María del Carmen García Herrero, “Viudedad foral y viudas aragonesas a finales de la Edad Media,” *Hispania* 53 (1993): 438–42. For a detailed discussion of the evolution of competing ideals about marital property, see Charles Donahue, “What Causes Fundamental Legal Ideas? Marital Property in England and France in the Thirteenth Century,” *Michigan Law Review* 78 (1979–80): 59–88.

16. *C. Tort.* V.1.20 and IV.7.5.

17. Antonio Aunós Pérez, *El derecho catalán en el siglo XIII* (Barcelona: Helios, 1926), 249.

18. FVV.I.4, FVV.I.10.

19. María Angeles Belda, *Instituciones de derecho de familia en los “Furs de Valencia”* (Zaragoza: Anubar, 1979), 16–18.

20. Winer, *Women, Wealth, and Community*, 28–29.

21. Most notably and influentially on this point, see Georges Duby, *The Knight, the Lady and the Priest: The Making of Modern Marriage in Medieval France*, trans. Barbara Bray (New York: Pantheon Books, 1983), 104–18. Other historians have disputed Duby’s findings, which place the decline of aristocratic women’s status in the eleventh century, suggesting the late twelfth or early thirteenth centuries as more characteristic; see, for example, Martin Aurell i Cardona, “La détérioration du statut de la femme aristocratique en Provence (Xe–XIIIe siècles),” *Le Moyen Âge* 91 (1985): 5–32, and *Les noces du comte: mariage et pouvoir en Catalogne (785–1213)* (Paris: Publications de la Sorbonne, 1995), esp. 479–80; Elizabeth Haluska-Rausch, “Transformations in the Powers of Wives and Widows near Montpellier, 985–1213,” in *The Experience of Power in Medieval Europe, 950–1350*, ed. Robert F. Berkhofer III, Alan Cooper, and Adam J. Kosto (Aldershot: Ashgate, 2005), 153–68. Other scholars have chosen instead to focus on essential continuities in aristocratic women’s property holding through at least the twelfth century; see Amy Livingstone, “Noblewomen’s Control of Property in Early Twelfth-Century Blois-Chartres,” *Medieval Prosopography* 18 (1997): 55–72, as well as many essays in Theodore Evergates, ed., *Aristocratic Women in Medieval France* (Philadelphia: University of Pennsylvania Press, 1999).

22. Daniel Lord Smail, “Démanteler le patrimoine: Les femmes et les biens dans la Marseille médiévale,” *Annales (H.S.S.)* 52 (1997): 356–58; Winer, *Women, Wealth, and Community*, 20–25.

23. Smail, “Démanteler le patrimoine,” 356–59. Smail points out that even this figure may be artificially low, as it does not take into account joint marital properties that may have been registered as belonging to a woman’s husband alone.

24. Of the Manosque dotal contracts dating from 1290–1369, 54 percent were cash-only; 24.7 percent were land-only; 14.3 percent were of mixed cash-real estate composition; the remainder included only moveable goods. Andrée Courtemanche, *La richesse des femmes: patrimoines et gestion à Manosque au XIV^e siècle* (Paris: Vrin, 1993), 104–12.

25. Winer, *Women, Wealth, and Community*, 26–28.

26. Only 12 percent of artisan- and laboring-status dowries contained real estate, while the majority were a combination of cash and movables—a pattern that remained relatively consistent into the early modern era. Those women who did bring immovable property as all or part of their dowry tended overwhelmingly to be widows entering into a second or subsequent marriage. Lightfoot, “Negotiating Agency,” 99–117.

27. Winer, *Women, Wealth, and Community*, 26–28.

28. See, for example, Linda McMillin, “The House on Sant Pere Street: Four Generations of Women’s Land Holding in Thirteenth-Century Barcelona,” *Mediterranean Encounters* 12 (2006): 62–73; and Nathaniel L. Taylor, “Women and Wills: Sterility and Testacy in Catalonia in the Eleventh and Twelfth Centuries,” *Mediterranean Encounters* 12 (2006): 87–96.

29. Respectively AMG, Pergamins 236 (1328); 263 (1332); 186 (1321), 268 (1333).

30. For specific language to this effect, see AMG, Pergamins 186 (1321) and 263 (1332).

31. X 4.20.7, 729–30.

32. AMG, Pergamins 105 (1298), 108 (1299), 111 (1299), 129 (1304), 132 (1305), 169 (1318), 196 (1322), and 264 (1332).

33. AMG, Pergamins 101 (1296), 221 (1326), 251 (1331).

34. AMG, Pergamins 107 (1298), 112 (1299), 232 (1328), 267 (1333).

35. As Amy Livingstone has pointed out in a recent examination of women’s property in the high medieval Chartrain, property ownership in the Middle Ages was fairly tangled, with differing levels of ownership and proprietorship; see Livingstone, “Aristocratic Women in the Chartrain,” in *Aristocratic Women in Medieval France*, ed. Theodore Evergates (Philadelphia: University of Pennsylvania Press, 1999), 52; . We should thus not make women’s complete and unencumbered control of property the yardstick by which we measure their economic agency.

36. *C. Tort.* V.1.16; *FVV.III.5*; the Code of Tortosa is explicit on this point, specifying that a woman’s dowry and its fruits were to be controlled by her husband during the marriage, “In order that he might support the extra expense of a wife.”

37. *C. Tort* V.1.6, V.3.6; *FV* V.1.17, V.III.5, V.III.9.

38. *FVV.V.16* and 20.

39. *C. Tort.* V.1.4, 7, 16; *FVIV.XIX.1*, 12, 28, V.V.1.

40. *C. Tort.* V.1.3–5.7.

41. For an argument focusing on the kingdom of Valencia, see Pedro López Elum and

Mateu Rodrigo Lizondo, “La mujer en el código de Jaime I de los *Furs de Valencia*,” in *Las mujeres medievales y su ámbito jurídico* (Madrid: Universidad Autónoma de Madrid, 1983), 132–33.

42. *C. Tort.* V.I.7; *FVV.I.8*, V.V.7, 20, 30.

43. See, for example, ACA, C, Reg. 371, 88v–89r (1322); ACA, C, Reg. 374 (tomo 2^o), 163v (1324); and ACA, C, Reg. 437, 88v–89r (1330).

44. ACA, C, Reg. 429, 130v–131r (1328).

45. ACA, C, Reg. 374 (tomo 2), 163v (1324).

46. ACA, C, Reg. 371, 88v–89r (1322).

47. ACA, C, Reg. 430, 251r (1329).

48. ACA, C, Reg. 374 (tomo 2), 163v (1324). For a detailed discussion of summary procedure, see above, Chapter 1, “Procedure: Civil, Criminal, and *Inquisitio*.”

49. For analysis of the effect of gendered legal assumptions on women’s experience of the violence in abusive relationships, see the section “Domestic Abuse” in Chapter 4.

50. ACA, C, Reg. 376, 37 r–v (1325).

51. ACA, C, Reg. 437, 88v–89r (1330).

52. For detailed information on the *mas*, see Jordi de Bolòs, *El mas, el pagès i el senyor* (Barcelona: Curial, 1995). See also the essays in Maria Teresa Ferrer i Mallol, Josefina Mutgé i Vives, and Manuel Riu i Riu, eds., *El mas català durant l’Edat Mitjana i la Moderna (segles IX–XVIII): aspectes arqueològics, històrics, geogràfics, arquitectònics i antropològics* (Barcelona: CSIC, 2001), esp. Joan Vilà-Valentí, “Aspectes geogràfics i territorials del mas” (3–17) and Manuel Riu i Riu, “Aspectes històrics i arqueològics del mas” (19–48).

53. AHCT, Llibres del batlle 1–1, 121v–122r (1300).

54. AHCM, Manuals del veguer 6, 73r (1310).

55. Courtemanche, *La richesse des femmes*, 121–26; Julius Kirshner, “Wives’ Claims Against Insolvent Husbands in Late Medieval Italy,” in *Women of the Medieval World*, ed. Julius Kirshner and Suzanne F. Wemple (Oxford: Blackwell, 1985), 256–303; Lightfoot, “Negotiating Agency,” 214–70; Meek, “Women, Dowries and the Family,” 140–43; Francine Michaud, *Un signe des temps: accroissement des crises familiales autour du patrimoine à Marseille à la fin du XIIIe siècle* (Toronto: Pontifical Institute of Mediaeval Studies, 1994), 123–28; Smail, “Démanteler le patrimoine,” 359–68; Winer, *Women, Wealth, and Community*, 32–33.

56. Belda, *Instituciones de derecho de familia*, 19. For probable Roman antecedents, see Treggiari, *Roman Marriage*, 156–57. A gift from husband to wife or from husband’s family to wife’s family was also common in early Germanic society; see Hughes, “From Brideprice to Dowry,” 266–68; and Suzanne Fonay Wemple, *Women in Frankish Society: Marriage and the Cloister, 500–900* (Philadelphia: University of Pennsylvania Press, 1981), 10–15, 31–35.

57. Lightfoot, “Negotiating Agency,” 134–35; see also Rebecca Lynn Winer, “Silent Partners? Women, Commerce and the Family in Medieval Perpignan, c. 1250–1300” (Ph.D. dissertation, University of California at Los Angeles, 1996), 69; Codina, *Contractes de matrimoni*, 205; and Teresa Maria Vinyoles i Vidal, *Les barcelonines a les darreries de l’Edat Mitjana (1370–1410)* (Barcelona: Fundació Salvador Vives Casajuana, 1976), 87–89.

58. CL III. [34] (*De donationibus ante nuptias*); *C. Tort.* V.1.1; *FVV.I.2*. If the dowry was paid in immovable goods, rather than cash, then the dower had to equal 50 percent of the appraised value of the real property (*C. Tort.* V.1.1; *FVV.I.5*). If the property was not appraised, then the couple and their families could come to an agreement among themselves as to the proper amount for a dower (*C. Tort.* V.1.1). The system of marital assigns was heavily weighted in favor of the feminine dowry. According to one study of marriage contracts from the lower Llobregat region in Catalonia, the most common form of property exchange in fourteenth-century marriage contracts in that region was for a woman to bring a dowry to the marriage (66.2 percent). Distant second (18.2 percent) was a contract for a single man's marital gift to a single woman (Codina, *Contrates de matrimoni*, 53). A third and less common type of marital assign was the *arres* or *arras*, a gift typically consisting of rings, jewelry, or moveable goods sometimes given at the time of betrothal as a guarantee of a marriage promise. By the mid-fifteenth century, legislators found it necessary to limit the value of the *arres* to 500 sous (*FVIX.29.11*), suggesting that this type of gift may have been primarily a phenomenon of upper-class marriages.

59. The two remaining contracts specify, in one case, a dower of 200 sous for a dowry of 800 sous (AMG, Pergamins 111 [1299]) and another of rights over certain lands the groom held as an *honor*, of unspecified value (AMG, Pergamins 232 [1328]).

60. Smail, "Démanteler le patrimoine," 359–68. Teresa Maria Vinyoles i Vidal notes that a group of Barcelona *escreix* documents dating from the late fourteenth and early fifteenth centuries all adhere to an amount precisely 50 percent of the dowry. She does, however, note that this 50 percent represents only the coin value and excludes any additional moveable or immovable property (Vinyoles i Vidal, *Les barcelonines*, 88, n. 90). It is interesting to speculate that this strict adherence to the letter of the law about three-quarters of a century after the period under study in the present chapter may reflect an attempt on the part of civic authorities to crack down on couples who used marital assigns as a hedge against creditors.

61. See above, at nn. 32–34.

62. Dig. 16.1.1–2.

63. Dig. 24.3.24.

64. Cod. 5.12.29. A wife who gained control over her dowry was obligated by law to use it to support herself and her family; that is, she was expected to take over for her husband's unfulfilled obligations; see Nov. 97.6.

65. Jesús Lalinde Abadía, "La recepción española del senadoconsulto Velleyano," *AHDE* 41 (1971): 335–72, esp. 335–37.

66. Nov. 134.8.

67. Kirshner, "Wives' Claims Against Insolvent Husbands," 286; Lalinde Abadía, "La recepción española del senadoconsulto Velleyano," 345–46.

68. Lalinde Abadía, "La recepción española del senadoconsulto Velleyano," 341–45.

69. *C. Tort.* 4.7.1.

70. Lalinde Abadía, "La recepción española del senadoconsulto Velleyano," 347–51.

71. Lightfoot, "Negotiating Agency," 222.

72. The source of ordinary people's knowledge of legal ideas is not completely clear in these cases. It is unlikely that laypeople of either sex would have been exposed to legal education or treatises. Still, women in the cases under study in this chapter display at least basic knowledge of the way that pleas ought to be couched in order to win a case. We do know that courts in other countries were public and attracted spectators not directly involved with the proceedings; thus, laypeople might have gained their legal knowledge by watching their neighbors litigate or by having been involved themselves in previous litigation. See Frederik Pedersen, "Did the Medieval Laity Know the Canon Law Rules on Marriage? Some Evidence from Fourteenth-Century York Cause Papers," *Mediaeval Studies* 56 (1994): 111–52, esp. 147–49; and Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423* (Ithaca, N.Y.: Cornell University Press, 2003), 33–34.

73. Kirshner, "Wives' Claims Against Insolvent Husbands," 265–70, citing Odofredus, gloss on Cod. 5.12.29, and Bartolus, gloss on Cod. 15.12.29 (*Ubi adhuc*).

74. AHCT, Llibres del batlle 2, 179v (1322).

75. AHCT, Llibres del batlle 1–1, 49r–v (1299).

76. AHCT, Llibres del batlle 1–1, 72r (1299/1300).

77. AHCT, Llibres del batlle 3–1, 67r (1325/26).

78. AHCT, Llibres del batlle 3–1, 67r (1325/26).

79. AHCT, Llibres del batlle 2, 162v–163r (1316/17).

80. *Recognoverunt proceres*, cap. 11, in *CADC* 40 (prag. 1.13). This latter formulation was extended to Girona when that city adopted the law of *Recognoverunt proceres* as legally valid in their courts; see *CG* 1, par. 74. One can also assume that the region around Lleida followed suit, as it was one of the first to admit Roman law as a living law; see Lalinde Abadía, "La recepción española del senadoconsulto Velleyano," 341–45.

81. This was not a unanimous opinion: some jurists held that voluntary joint actions were valid, so long as the claim itself was not fraudulent. Kirshner, "Wives' Claims Against Insolvent Husbands," 297.

82. See, for example, Cécile Béghin-Le Gourriérec, "La tentation du veuvage: patrimoine, gestion, et travail des veuves dans les villes du Bas-Languedoc aux XIV^e au XV^e siècles," in *La famille, les femmes et le quotidien (XIV^e–XVIII^e siècle)*, ed. Isabelle Chabot, Jérôme Hayez, and Didier Lett (Paris: Publications de la Sorbonne, 2006), 163–80; as well as many of the essays in Louise Mirrer, ed., *Upon My Husband's Death: Widows in the Literature and Histories of Medieval Europe* (Ann Arbor: University of Michigan Press, 1992). These authors' arguments about widows' agency should be understood to be relative to the position of married women, rather than to their male counterparts; see Patricia Skinner, "The Widow's Options in Medieval Southern Italy," in *Widowhood in Medieval and Early Modern Europe*, ed. Sandra Cavallo and Lyndan Warner (Harlow: Longman, 1999), 57–65, esp. 64.

83. Michaud, *Un signe des temps*, 137–52.

84. Cod. 3.14.

85. Stephen of Tournai, *Summa*, D. 87 pr., v. *viduis* (109), and others; as cited in James

A. Brundage, "Widows as Disadvantaged Persons in Medieval Canon Law," in *Upon My Husband's Death*, ed. Mirrer, 193–95.

86. Brundage, "Widows as Disadvantaged Persons," 195–96.

87. Johannes Teutonicus, c. 1 v. *plus tamen*; C. 23 q. 5 c. 23, v. *oppressos*, as cited in Brundage, "Widows as Disadvantaged Persons," 196–98.

88. X 2.2.11 and 15; Apparatus to X 1.29.38 para. 4 (fol. 142 va), and to X 2.2.11, v. *terminetis* (fol. 198 rb), as cited in Brundage, "Widows as Disadvantaged Persons," 196–98.

89. For examples of the construction of widows as vulnerable or "miserable persons," see Michaud, *Un signe des temps*, 109; and Isabelle Chabot, "Widowhood and Poverty in Late Medieval Florence," *Continuity and Change* 3, 2 (1988): 291–311.

90. AHCT, Llibres del batlle 2, 70r–v (1322/23).

91. AHCM, Manuals del veguer 5, 84v–85v (1303).

92. AHCM, Manuals del veguer 5, 53r (1303).

93. Carmen López Alonso, "Mujer medieval y pobreza," in *La condición de la mujer en la Edad Media: actas del coloquio celebrado en la Casa de Velázquez*, ed. Yves-René Fonquerne and Alfonso Esteban (Madrid: Casa de Velázquez, Universidad Complutense, 1986), 261–72; Chabot, "Widowhood and Poverty," 301–4; Meek, "Women, Dowries and the Family," 149–51.

94. García Herrero, "Viudedad foral y viudas aragonesas," 438–42.

95. AHCM, Manuals del veguer 8, 10r (1313).

96. AHCM, Manuals del veguer 6, 39r (1309/1310).

97. López Alonso, "Mujer medieval y pobreza," 261–64; Sharon Farmer, *Surviving Poverty in Medieval Paris: Gender, Ideology, and the Daily Lives of the Poor* (Ithaca, N.Y.: Cornell University Press, 2002), 3; James William Brodman, *Charity and Welfare: Hospitals and the Poor in Medieval Catalonia* (Philadelphia: University of Pennsylvania Press, 1998), 1–7. This broad definition of poverty meant that women—especially girls unable to raise a dowry and prostitutes—were special recipients of charity; see Brodman, *Charity and Welfare*, 100–106.

98. Chabot, "Widowhood and Poverty," 291–93; López Alonso, "Mujer medieval y pobreza," 271–72.

99. *OAM* 86–89 (1301–7).

100. AHCT, Llibres del batlle 3-1, 70r (1325/26).

101. AHCT, Llibres del batlle 3-1, 113r (1326/27).

102. AHCM, Manuals del veguer 8, 111r–v (1313).

103. *OAM* 331 (1307–11).

104. AHCM, Manuals del veguer 8, 111r–v (1313).

105. AMG, Pergamins 220 (1325).

106. AHCT, Llibres del batlle 3/2, 40r (1330).

107. In thirteenth-century family litigation in nearby Marseille, for example, the most common were dotal cases: 65 percent of all cases between 1277 and 1320. These conflicts tended to come at the point where the household was dissolved, at the death of the male head of household. And it was the most vulnerable members of medieval society—the

wives, daughters, sisters, widows, nuns, old people, and orphans—who were most often the plaintiffs in these litigations. Michaud, *Un signe des temps*, 106.

108. AHCM, Manuals del veguer 7, 24r (1312).

109. AHCM, Manuals del veguer 7, 7r (1311).

110. For an example spanning several generations of women, see McMillin, “The House on Sant Pere Street,” 62–78.

111. Scholars studying women in other times and places have charted a long history of the phenomenon of property strategies that took advantage of this gendered loophole in the law. Amy Louise Erickson has shown that the wills of early modern Englishwomen showed a marked preference for female legatees, arguing that their charitable bequests to poor widows in particular suggest an awareness on women’s part that they were part of an economically disadvantaged class; see Erickson, *Women and Property in Early Modern England* (London: Routledge, 1993), 204–21. Allyson M. Poska has argued for late medieval and early modern Galicia that married women were free to bequeath their dowries, inherited property, and one-half of the joint marital property in any way they saw fit and that these properties often went to women; family homes, especially, tended to pass through the female line; see Poska, *Women and Authority in Early Modern Spain: The Peasants of Galicia* (Oxford: Oxford University Press, 2006), 157–61. Claire E. de Trafford, in a study of the effects of the Westminster statute *De donis* (1285), has characterized such practices as the transmission of what she calls “women’s land”; that is, a woman might pass her marriage portion on to her daughters as their *own* marriage portions, likely creating an expectation that daughters had a special claim on these lands. de Trafford, “Share and Share Alike? The Marriage Portion, Inheritance, and Family Politics,” in *Studies on Medieval and Early Modern Women: Pawns or Players?* ed. Christine Meek and Catherine Lawless (Dublin: Four Courts Press, 2003), 41–48.

112. *CG* 2, XXXV.4.

113. *FVV*.II.6, 8; *V.V*.6.

114. *C. Tort*. V.2.3.

115. García Herrero, “Viudedad foral y viudas aragonesas,” 432–44. In 1348, a further condition was added that *either* spouse forfeited property rights if he or she were responsible for the other spouse’s death.

116. García Herrero, “Viudedad foral y viudas aragonesas,” 437–38.

117. *FVV*.II.6 and 8; *V.V*.6.

118. *CL* III.[34] (“De donationibus ante nuptias”).

119. For a discussion of this, see García Herrero, “Viudedad foral y viudas aragonesas”: 443–44. For comparison with elsewhere in the medieval Mediterranean, see Klapisch-Zuber, “The ‘Cruel Mother’,” 190–91.

120. AHCM, Manuals del veguer 10, 15r (1315).

121. AHCM, Manuals del veguer 6, 64v–65r (1310).

122. Winer, *Women, Wealth, and Community*, 58.

123. Julie Hardwick has noted that guardianship, far from being the object of competition, was a responsibility family members sometimes tried to avoid because of the time and

expense involved; Hardwick, *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (University Park: Pennsylvania State University Press, 1998), 120–28.

124. *C. Tort.* 5.6.1. Women were free to decline this position; the Code of Tortosa specifies that the office should go first to the one, then to the other, “if they wish to have it.”

125. Winer, *Women, Wealth, and Community*, 51–58; Vinyoles i Vidal, *Les barcelonines*, 111. Grace Coolidge notes that this preference for widows as guardians continued into the early modern era in Spain, despite the apparent contradiction between the legal assumption of women’s fundamental weakness and the significant legal, social, and economic responsibilities of guardianship. Coolidge, “‘Neither Dumb, Deaf, nor Destitute of Understanding’: Women as Guardians in Early Modern Spain,” *Sixteenth Century Journal* 36 (2005): 673–81; Christiane Klapisch-Zuber similarly notes for later medieval Florence that moralists praised widow-guardians as “acting both as a mother and a father,” even while acknowledging that there were some fatherly tasks, such as introducing sons into the public and political arenas or inculcating them with a sense of membership in the paternal *casa*, for which women were unsuited and unqualified; Klapisch-Zuber, “The ‘Cruel Mother,’” 195–96.

126. ACA C, Reg. 21, 74v (1272), as cited in Winer, *Women, Wealth, and Community*, 49.

127. ACA, C, Reg. 436, 134v–135r (1329). The reference to “fitting” in this case (“it is fitting that the children of said Ramon should live with their mother, and not with the aforementioned concubine”), however, seems to have had more to do with the fact that, by living with their grandfather rather than with their mother, the children would be exposed to the former’s rather irregular living situation.

128. *CADC* 6.2.1.

129. AHCM, Manuals del veguer 8, 43v (1313).

130. ACA, C, Reg. 437, 12r (1330).

131. AMG, Pergamins 220 (1325).

132. ACA, C, Reg. 436, 134v–135r (1329).

133. AHCM, Manuals del veguer 8, 46r–v (1313).

134. AHCM, Manuals del veguer 8, 46r–v (1313).

135. For a thorough examination of a transition between two models of conceptualizing the household and its potential survival with a woman at its head, see Howell, *The Marriage Exchange*, 27–45 and 124–37.

136. Klapisch-Zuber, “The ‘Cruel Mother,’” 186–96.

137. Winer, *Women, Wealth, and Community*, 49–50 and 75; see also Haluska-Rausch, “Transformations in the Powers of Wives and Widows,” 156–60.

138. The question here may not be so much why women in the Crown of Aragon were seen as fit to be sole guardians and administrators as why women in many Italian cities were not. The answer may lie in the continuing presence in the northern Italian cities’ legal culture of the Lombard-law concept of *mundium* or a male head of household’s high degree of control over even an adult woman’s person and legal personality, coupled with the eagerness on the part of the patrician families of that region to use such a concept in

service of the patriarchal *casa*. Thomas Kuehn, "Person and Gender in the Laws," in *Gender and Society in Renaissance Italy*, ed. Judith Brown and Robert Davis (London: Longman, 1998), 97–101; Kathryn Reyerson and Thomas Kuehn, "Women and Law in France and Italy," in *Women in Medieval Western European Culture*, ed. Linda E. Mitchell (New York: Garland, 1999), 136–38.

139. See, for example, *CADC* 5.4.1.

140. Enrique Gacto Fernández, "Entre la debilidad y la simpleza: la mujer ante la ley," *Historia* 16, 145 (1988): 29.

141. AHCM, Manuals del veguer 7, 32v–33r (1312).

142. Chabot, "Widowhood and Poverty," 296–301; Howell, *The Marriage Exchange*, 144–52.

143. *CADC* 5.4.1b; see also Jesús Lalinde Abadía, *La jurisdicción real inferior en Cataluña* ("Corts, veguers, batlles") (Barcelona: Ayuntamiento de Barcelona, Museo de Historia de la Ciudad, 1966), 121–22; and Christina Forns de Rivera, "El ejercicio de la tutela por las mujeres de los ciudadanos de Barcelona (siglos XII–XIV)," in *Historia de la mujer e historia del matrimonio*, ed. María Victoria López Cordón and Montserrat Carbonell i Esteller (Murcia: Universidad de Murcia, 1997), 54–55.

144. Arxiu de la ciutat de Barcelona, 1-2-1664, as cited in Forns de Rivera, "El ejercicio de la tutela por las mujeres," 56–59. Rebecca Winer cites a similar case from Perpignan several decades earlier in 1279, in which Sança, widow of Duran de Pererar, had to take an oath before the *veguer* renouncing her right to be protected from her late husband's obligations and publicly (though not under oath this time) declare that she would not remarry; ACA, Pergamins Pere II 177, as cited in Winer, *Women, Wealth and Community*, 47.

145. Forns de Rivera, "El ejercicio de la tutela por las mujeres," 56–59.

146. *FV* V.I.14 and V.II.1; *CG* 2, XXXV.3–4 and XXXVI.1; *FA* 669. For the kingdom of Aragon, see also García Herrero, "Viudedad foral y viudas aragonesas," 437–38. The *Constitucions* of Catalonia speak only to the issue of a widow who "violates the bed of her husband" by having sexual relations with another man during her widowhood (*CADC* V.3.1); however, it seems likely that remarriage, which almost always entailed sexual relations, would cause the same loss of usufructuary rights. For more on this issue in the Crown territory of Perpignan, see Winer, *Women, Wealth, and Community*, 42–44; for other areas in the Mediterranean region, see Laure Verdon, "La femme en Roussillon aux XIIe et XIIIe siècles: statut juridique et économique," *Annales du Midi* 227 (1999): 304–5; Béghin-Le Gourriérec, "La tentation du veuvage," 169–72; Klapisch-Zuber, "The 'Cruel Mother'," 189–90.

147. Béghin-Le Gourriérec, "La tentation du veuvage," 179–80.

148. Bonaventure, *Comm.*, to Sent. 4.42.3.2, as cited in James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987), 477.

149. Hostiensis, *Summa Aurea*, lib. 4, tit. *De secundis nuptiis*, as cited in Brundage, 477.

150. *FA* 669.

151. *CG* 2, XXXV.3.

152. AHCM, Manuals del veguer 6, 22r (1309).

153. Forns de Rivera, “El ejercicio de la tutela por las mujeres,” 56–59.

154. Cod. 5.35.1.

155. Cod. 2.12.21. Male guardians might cede decision-making authority to mothers if a man named her as legal guardian in his testament, but the guardians still bore legal liability (Cod. 5.46.2); it may have been more common for guardians to follow the advice of the classical jurist Papinian, who asserted that, while fathers’ wills naming their widows as guardians were not legal, a legally appointed guardian in such a case would be wise to seek out their counsel (Dig. 26.2.26 pr. and 36.1.76.1). For further discussion, see Jane Gardner, *Women in Roman Law and Society* (Bloomington: Indiana University Press, 1986), 147–50.

156. Cod. Theod. 3.17.4; see also Gardner, *Women in Roman Law and Society*, 150.

157. Béghin-Le Gourriérec, “La tentation du veuvage,” 179.

158. Forns de Rivera, “El ejercicio de la tutela por las mujeres,” 62.

159. Tim Stretton has argued that widows faced a double bind in the courtroom: they could use the “weakness” of their status as a potent tool, but the very act of litigating tended to negate that status. Stretton, “Widows at Law in Tudor and Stuart England,” in *Widowhood in Medieval and Early Modern Europe*, ed. Cavallo and Warner, 193–208, esp. 195–99. I do not disagree with this assessment; I believe my argument represents the other side of the same coin.

CHAPTER 3. CRIMES OF PASSION: SEXUAL TRANSGRESSION AND THE LEGAL TAXONOMY OF WOMEN

1. ACA, C, Reg. 437, 194v–195r (1330).

2. Isabel Pérez Molina, “Les dones en el dret clàssic català: un discurs sexual,” *Duoda* 2 (1991): 48–52.

3. Dig. 34.9.13; 48.18.15; see also Susan Treggiari, *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian* (Oxford: Clarendon, 1991), 278–79.

4. Judith Evans Grubbs, *Law and Family in Late Antiquity* (Oxford: Clarendon, 1995), 205–10.

5. By 449 C.E., a married woman had grounds for divorce if her husband had an affair with another married woman, and one of Justinian’s Novels stipulated that a married man who committed adultery forfeited his rights to dotal property and nuptial gifts. Antti Arjava, *Women and Law in Late Antiquity* (Oxford: Clarendon, 1996), 204; see also Nov. 134.10 pr.

6. Treggiari, *Roman Marriage*, 262–64; see also Cod. 9.9.1.

7. “. . . vel ad contemptum sui domi suae ipsa inspiciente cum impudicis mulieribus (quod maxime etiam castas exasperat) coetum ineuntem . . .” Cod. 5.7.8.2 See also Arjava, *Women and Law in Late Antiquity*, 204.

8. Cod. 5.17.8.3.

9. C. 32 q. 6 c. 1.
10. C. 32 q. 6 d.p.c. 5.
11. X 4.19.15.
12. C. 32 q. 6 c. 4.
13. *OAM* 297(1307–11); see also X 2.23.12.
14. *FA* 673. According to Roman law, an adulteress had to forfeit one-third of her dowry (see Treggiari, *Roman Marriage*, 290), but concessions were made so that the woman's crime and subsequent financial sanctions would not cause her blameless husband to fall into poverty (Dig. 24.3.36), implying that the husband of an adulteress retained her dowry for his support.
15. *C. Tort.* IX.2.5.
16. *CADC, Const.* IX.8.2.
17. *FT* 424.
18. Antonio Aunós Pérez, *El derecho catalán en el siglo XIII* (Barcelona: Helios, 1926), 255.
19. “. . . del Coyl de Sent Johan tro fora la porta de Vinpeçol.” *C. Tort.* IX.2.5. For possible source, see Johannes Teutonicus, *Glos. ordinaria* to C.32 q.1 c.5, v. *et calvatos*.
20. ACA, C, Reg. 354, 134r (1315).
21. ACA, C, Reg. 371, 6v–7r (1322).
22. *OAM* 317 (1307–11)—a ruling probably based on Cod. 9.9.1. This may have been a viewpoint common to the Mediterranean lands; in his analysis of sexual culture in medieval Italy, Michael Rocke points to the preaching of Bernardino of Siena, who opined that while a man, because he was by nature more rational than a woman, should be held *more* culpable for infidelity, it was still fitting that a woman's adultery resulted in greater shame since sexual honor was her only virtue to lose. This may account for the fact that public humiliation was one of the more common punishments for women since their honor depended largely on community opinion. Rocke, “Gender and Sexual Culture in Renaissance Italy,” in *Gender and Society in Renaissance Italy*, ed. Judith C. Brown and Robert C. Davis (New York: Longman, 1998), 158–59.
23. ACA, C, Reg. 359, 144v (1319).
24. ACA, C, Reg. 436, 215r–v (1330).
25. ACA, C, Reg. 436, 136v–137v (1329); for Sibila's original property suit, see ACA, C, Reg. 430, 251r (1329).
26. Patricia Skinner, “Gender and Memory in Medieval Italy,” in *Medieval Memories: Men, Women and the Past, 700–1300*, ed. Elisabeth van Houts (London: Longman, 2001), 45–49.
27. Flocel Sabaté, “La Sexualitat a l'època medieval,” in *Sexualitat, història i antropologia*, ed. Xavier Roigé (Lleida: Universitat de Lleida, 1996), 46–47.
28. See, for example, Ricardo Córdoba de la Llave, “Las relaciones extraconyugales en la sociedad castellana bajomedieval,” *Anuario de estudios medievales* 16 (1986): 592; and Cristina Segura Grañó, “Situación jurídica y realidad social de casadas y viudas en el medioevo hispano (Andalucía),” in *La condición de la mujer en la Edad Media: actas del coloquio*

celebrado en la Casa de Velázquez, ed. Yves-René Fonquerne and Alfonso Esteban (Madrid: Casa de Velázquez, 1986), 126–27. For a likely influence on these interpretations, see Julian Pitt-Rivers, “Honor and Social Status in Andalusia,” in Pitt-Rivers, *The Fate of Shechem, or the Politics of Sex: Essays in the Anthropology of the Mediterranean* (Cambridge: Cambridge University Press, 1977), 20–28.

29. Georgina Dopico Black, *Perfect Wives, Other Women: Adultery and Inquisition in Early Modern Spain* (Durham, N.C.: Duke University Press, 2001), 6–11.

30. ACA, C, Reg. 353, 25v (1315).

31. ACA, C, Reg. 436, 13v–14r (1329).

32. ACA, C, Reg. 359, 135v–136r (1319).

33. ACA, C, Processos en foli 3/2, esp. 5r (1296).

34. ACA, C, Reg. 370, 93v–94r (1322).

35. Guido Ruggiero has noted for Venice a similar discrepancy in the motivations of the authorities versus those of the litigants themselves, though his findings emphasize the Venetian authorities’ concern for property, rather than public order; see Ruggiero, *The Boundaries of Eros: Sex Crime and Sexuality in Renaissance Venice* (Oxford: Oxford University Press, 1985), 45–53.

36. “. . . non attento quod uxores habeant teneant in eorum hospiciis et etiam aliis quibusdam locis aliquas mulieres quas tractant et procurant ac si essent uxores cum quibus adulterium committunt.” ACA, C, Reg. 439, 31v–32r (1330).

37. ACA, C, Reg. 439, 31v–32r (1330).

38. ACA, C, Reg. 352, 57v–58r (1314).

39. ACA, C, Reg. 519, 25r–v (1327); see also David Nirenberg, *Communities of Violence: Persecution of Minorities in the Middle Ages* (Princeton, N.J.: Princeton University Press, 1996), 162, n. 124.

40. ACA, C, Reg. 365, 135v–136r (1320).

41. For an in-depth discussion of this issue, see chap. 5, “Sex and Violence Between Majority and Minority,” in Nirenberg, *Communities of Violence*, esp. 159–65.

42. Asunción Blasco Martínez, “El adulterio de Doña Lumbré, judía de Zaragoza,” *Michael* 11 (1989): 100–101.

43. Blasco Martínez, “El adulterio de Doña Lumbré,” 99–107. For a discussion of the use of the royal court system as a way of monetizing violence and generating revenue for Christian authorities, see Nirenberg, *Communities of Violence*, 163.

44. See Mark Meyerson, “Prostitution of Muslim Women in the Kingdom of Valencia: Religious and Sexual Discrimination in a Medieval Plural Society,” in *The Medieval Mediterranean: Cross-Cultural Contacts*, ed. Marilyn Chiat and Kathryn Reyerson (St. Cloud, Minn.: North Star Press, 1988), 89–91.

45. See, for example, ACA, C, Reg. 388, 105v (1323): “Nos Infans etcetera attendentes quod ut asseritur iuxta forum Regni Valencie si sarraceni committant adulterium in eodem Regno domini locorum ubi degunt possunt eosdem sarracenos tamquam captivos suos tenere ad eorum provincium semper set eos vendere nec impignerare absque domini Regis licenciam non possunt . . .”

46. María Teresa Ferrer i Mallol, *Els sarraïns de la Corona catalano-aragonesa en el segle XIV: segregació i discriminació* (Barcelona: CSIC, 1987), 22–23.

47. ACA, C, Reg. 211, 269r (1315), as cited in Ferrer i Mallol, *Els sarraïns*, 23.

48. ACA, C, Reg. 373, 173r (1325).

49. ACA, C, Reg. 388, 79r (1323).

50. ACA, C, Reg. 388, 105v (1323).

51. ACA, C, Reg. 391, 39r (1325).

52. *C. Tort.* IX.2.6.

53. *OAM* 255 (1307–11).

54. *OAM* 297(1307–11), probably based on X 2.23.12. These statutes did not limit who could bring the charges, and while husbands or their families were the most likely plaintiffs, others could get involved, such as in one case where the unnamed wife of Pere Rabaça, notary and scribe to the procurator of the kingdom of Valencia, was accused of “enormous adulteries” by Guillemma, Pere’s housekeeper, with the help of other members of Pere’s household—a charge that was later judged to have been completely fabricated; see ACA, C, Reg. 353, 114r–v (1315).

55. ACA, C, Processos en foli 126/19 (1378); for details, see Chapter 1, “Common Knowledge in the Courtroom.”

56. ACA, C, Processos en foli 3/2, 1v–2r (1296).

57. ACA, C, Processos en foli 3/2, 2r–2v (1296).

58. On the “inquisitorial hermeneutics” of the construction of adultery, see Black, *Perfect Wives*, 11–12.

59. ACA, C, Reg. 360, 45v (1319).

60. ACA, C, Reg. 436, 215r–v (1330).

61. ACA, C, Reg. 359, 135v–136r (1319).

62. Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423* (Ithaca, N.Y.: Cornell University Press, 2003), 168–74.

63. ACA, C, Reg. 367, 92v–93r (1322). No law code of the Crown of Aragon provided for state-sponsored incarceration of suspected or convicted adulteresses; see above, Chapter 1, “The Courts,” for a discussion of legal options. The *Usatges*, it should be noted, allow a husband to place his wife under house-arrest; see David Viera, “Francesc Eiximenis y el homicidio de la mujer adúltera,” *Estudios Franciscanos* 79 (1978): 4–7.

64. ACA, C, Reg. 360, 45v (1319).

65. ACA, C, Reg. 359, 135v–136r (1319).

66. ACA, C, Reg. 354, 85r (1315).

67. ACA, C, Reg. 367, 92v–93r (1322).

68. Pérez Molina, “Les dones en el dret clàssic català,” 66.

69. ACA, C, Reg. 437, 194v–195r (1330).

70. In his study of Castilian litigation surrounding extramarital sexuality, Ricardo Córdoba de la Llave has pointed out cases where a woman could be prosecuted for adultery even if she was only betrothed. Córdoba de la Llave, “Las relaciones extraconyugales,” 582.

71. María Jesús Lacarra, “Algunos datos para la historia de la misoginia en la Edad

Media,” in *Studia in honorem prof. M. de Riquer*, ed. Carlos Alvar (Barcelona: Quaderns Crema, 1986–87), vol. 1, 339–43. Under such circumstances, widows might be required to make a public show of faithfulness to their late husbands: Heath Dillard has noted that in the neighboring kingdom of Castile, at least one law code mandated that, during their year of mourning, widows make a weekly offering to the church where their husbands had been buried, consisting of a monetary gift and a loaf of white bread, likely symbolizing continued sexual purity. Dillard, *Daughters of the Reconquest: Women in Castillian Town Society, 1100–1300* (Cambridge: Cambridge University Press, 1984), 106.

72. See, for example, FVV.II.10, which also specified that the same held true for widowers with minor children.

73. ACA, C, Reg. 379, 6r (1326).

74. Dillard, *Daughters of the Reconquest*, 127–34 ff.

75. ACA, C, Reg. 450, 107v (1332) = *MV Docs.*, 296–97 (doc. no. 35).

76. For recent work on this little-studied group of women, see the essays in Judith M. Bennett and Amy M. Froide, eds., *Singlewomen in the European Past, 1250–1800* (Philadelphia: University of Pennsylvania Press, 1999).

77. P. J. P. Goldberg, “Pigs and Prostitutes: Streetwalking in Comparative Perspective,” in *Young Medieval Women*, ed. Katherine J. Lewis and Noël James Menuge (New York: St. Martin’s Press, 1999), 180–83.

78. Teresa María Vinyoles i Vidal, “L’esdevenir quotidià: treball i lleure de les dones medievals,” in *Més enllà del silenci: les dones a la història de Catalunya*, ed. Mary Nash (Barcelona: Generalitat de Catalunya, 1988), 73–89.

79. Teresa María Vinyoles i Vidal, *Les barcelonines a les darreries de l’edat mitjana (1370–1410)* (Barcelona: Fundació Salvador Vives Casajuana, 1976), 33–45.

80. Ruth Mazo Karras, “Prostitution and the Question of Sexual Identity in Medieval Europe,” *Journal of Women’s History* 11 (1999): 162–63.

81. Ruth Mazo Karras, “Sex and the Singlewoman,” in Bennett and Froide, eds., *Singlewomen*, 127–30.

82. See, for example, ACA, C, Reg. 485, 156v–157r (1332): “Hinc est quod cum Ffranciscus Martini ex Bonanato Martini tunc simplici cl ut autem pres[bi]tero et ex Romia Johana, filia . . . Johannis, quod de par[ro]chia sancti Stephani de costa Barchinone dicte muliere soluta ex illicito cohitu sit genitus et creatus. Et ideo grat[ia] munificentie regie beneficio de[cor]ari. Et propterea fuerit nobis pro parte dicti Ffrancisco Martini humiliter supplicantum ut ipsum legitimare et ad omnes actus legitimos restituere quos ex illicita procreati abstulerat de benignitate regia dignaremur Nos dicte supplicationi favora[b]iliter inclinati prenomiatum Ffranciscum de nostre plenitudine potestate ex certa scientia legitimatus et ad omnia jura legitima.” While not requesting any specific legal action, parish visitation records give further testimony to the frequency with which children were born to unmarried couples. For numerous examples, see Josep María Martí Bonet in “Las visitas pastorales y los ‘Communes’ del primer año del pontificado del obispo de Barcelona Ponç de Gualba (a. 1303),” *Anthologica annua* 28–29 (1981–82): 581–825.

83. Aragonese law explicitly permitted adoption in the case of people who lacked

legitimate heirs (*OAM* 198 [1301–7]), and the Code of Tortosa further spelled out the circumstances under which a natural child might inherit from an intestate father: if there were neither descendants nor ascendants nor collateral relatives nor wife, a natural child might claim one-seventh of the paternal goods but must share this with his mother, if she was still living (*C. Tort.* VI.8.5). But Grace Coolidge also points out that the fate of an illegitimate child depended not only on that child's status as "natural" but also on the social status of the mother and father, relative to each other. Coolidge, "A Vile and Abject Woman: Noble Mistresses, Legal Power, and the Family in Early Modern Spain," *Journal of Family History* 32 (2007): 201–8.

84. Ruggiero, *Boundaries of Eros*, 31–38.

85. Carol Lansing, "Concubines, Lovers, Prostitutes: Infamy and Female Identity in Medieval Bologna," in *Beyond Florence: The Contours of Medieval and Early Modern Italy*, ed. Paula Findlen, Michelle M. Fontaine, and Duane J. Osheim (Stanford, Calif.: Stanford University Press, 2003), 85–89.

86. Ruth Mazo Karras, *Common Women: Prostitution and Sexuality in Medieval England* (Oxford: Oxford University Press, 1996), 54–56. Karras argues that the term "single-woman," as used in later medieval English court records, was sometimes used to denote women who were commercial prostitutes or were suspected of being such. Karras does point out, though, that not all women who engaged in paramarital sexual activity were labeled "whores." The whore was usually a woman who was "common"; that is, she had sex indiscriminately with more than one man. As such, she was a marginal figure, and accusing a woman of whoredom could ruin her reputation. Karras, *Common Women*, 85–101.

87. Numerous examples of this tendency may be found in the parish visitation records of the diocese of Barcelona. See, for example, ADB, Visites pastorales II, 12v (1313), 33v–34r (1314), and 37r (1314), and ADB, Visites pastorales III, 21v (1323), among others.

88. Jacques Rossiaud, *Medieval Prostitution*, trans. Lydia G. Cochrane (Oxford: Blackwell, 1988), 13–25 ff.

89. ADB, Visites pastorales II, 12r (1313).

90. ADB, Visites pastorales II, 22r–v (1313).

91. Flocel Sabaté, "Femmes et violence dans la Catalogne du XIV^e siècle," *Annales du Midi* 106 (1994): 280–81. Sexual insults were the most common ones hurled at women and could in and of themselves be cause for litigation for defamation, as Sabaté demonstrates; see also Dillard, *Daughters of the Reconquest*, 170–71; and Richard H. Helmholz, "Canonical Defamation in Medieval England," *American Journal of Legal History* 15 (1971): 257–64.

92. ACA, C, Reg. 440, 202v (1330).

93. Ruth Mazo Karras has also noted the lack of direct translation between medieval and modern terms for prostitution, settling on the term "whore" as the nearest modern approximation of medieval people's understanding of the nature of this sexual activity (Karras, "Prostitution and the Question of Sexual Identity," 162). I have likewise chosen to use this term, which seems to best capture both the opprobrium leveled at these women and the spectrum of activities to which it might be applied.

94. D. 34 c. 16.

95. Johannes Teutonicus, *Glossa ordinaria* to D. 33 c. 6, v. *Si non pellicem*, to C. 27 q. 1 c. 41, v. *promiscuum*, and to C. 32 q. 4 c. 11, v. *quarum*; for number of partners, see *Glossa ordinaria* to D. 34 c. 16, v. *quae multorum* and to D. 45 c. 9, v. *paucorum*.

96. Thomas of Chobham, *Summa* 7.2.6.1.

97. Odofredus, *Lectura super Dig. vet.* to Dig. 23.2.43, as cited in James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987), 465.

98. *Summa Parisiensis* to C. 32 q. 5 c. 1 v. *tolerabilis*, ed. McLaughlin, 245.

99. Johannes Teutonicus, *Glossa ordinaria* to C. 32 q. 5 c. 3, v. *consentire*.

100. For example, Vicente Graullera, “Los hosteleros del burdel de Valencia,” *Revista d’història medieval* 1: *Violència i marginació en la societat medieval* (1990): 201–13; Rafael Narbona Vizcaíno, *Pueblo, poder y sexo: Valencia Medieval (1306–1420)* (Valencia: Diputació de Valencia, 1992); Karras, *Common Women*; Rossiaud, *Medieval Prostitution*. For a broader regional study, see Leah Lydia Otis, *Prostitution in Medieval Society: The History of an Urban Institution in Languedoc* (Chicago: University of Chicago Press, 1985).

101. M. Carmen Peris, “La prostitución valenciana en la segunda mitad del siglo XIV,” *Revista d’història medieval* 1: *Violència i marginació en la societat medieval* (1990): 187–91; Richard C. Trexler, “La prostitution florentine au XV^e siècle: patronages et clientèles,” *Annales E.S.C.* 36 (1981): 985–88.

102. Karras, *Common Women*, 131–42.

103. ACA, C, Reg. 359, 17v (1319).

104. ACA, C, Reg. 440, 202v (1330).

105. Rossiaud, *Medieval Prostitution*, 38–42.

106. For an argument on this point, see Richard Trexler, “La prostitution florentine,” esp. 983–84, 994–96.

107. According to the decretists, patronizing prostitutes was a sin, but only a minor one; see Brundage, *Law, Sex, and Christian Society*, 308–9 and n. 238.

108. ACA, C, Reg. 462, 143v (1333).

109. ACA, C, Reg. 462, 135r–v (1333) = *MV Docs.*, 303 (doc. no. 43).

110. ACA, C, Reg. 472, 284r–v (1335) = *MV Docs.*, 314 (doc. no. 56).

111. ACA, C, Reg. 440, 222v (1330).

112. ACA, C, Reg. 430, 87r (1328) = *MV Docs.*, 275 (doc. no. 11).

113. ACA, C, Reg. 462, 143v (1333).

114. Peris, “La prostitución valenciana,” 193–96.

115. ACA, C, Reg. 386, 96v (1322). On pimps, procuresses, and *alcabuetas*, see, for example, Narbona Vizcaíno, *Pueblo, poder y sexo*, 133–37; Otis, *Prostitution in Medieval Society*, 89–99; and Rossiaud, *Medieval Prostitution*, 129–59. For a book-length study of a single trial involving a Catalan *alcabueta*—albeit one from the fifteenth century, rather than the fourteenth—see Jaume Riera i Sans, *El cavaller i l’alcavota: un procés medieval* (Barcelona: Club Editor, 1973).

116. ACA, C, Reg. 373, 33r (1325).

117. ACA, C, Reg. 478, 192r–v (1329).

118. Narbona Vizcaíno, *Pueblo, poder y sexo*, 152.
119. Brundage, *Law, Sex, and Christian Society*, 463.
120. Thomas of Chobham, *Summa* 7.2.6.2, as cited in Brundage, *Law, Sex, and Christian Society*, 390; see also Rossiaud, *Medieval Prostitution*, 13–25.
121. Rossiaud, *Medieval Prostitution*, 43–47.
122. James A. Brundage, “Sumptuary Laws and Prostitution in Late Medieval Italy,” *Journal of Medieval History* 13 (1987): 351–52; see also X 5.39.25 and X 5.6.15.
123. Joëlle Rollo-Koster, “From Prostitutes to Brides of Christ: The Avignonese *Repenties* in the Late Middle Ages,” *Journal of Medieval and Early Modern Studies* 32 (2002): 112; Peris, “La prostitución valenciana,” 184; Rossiaud, *Medieval Prostitution*, 56–58.
124. Dillard, *Daughters of the Reconquest*, 174; see also Rossiaud, *Medieval Prostitution*, 56–58.
125. ACA, C, Reg. 440, 222v (1330).
126. Narbona Vizcaíno, *Pueblo, poder y sexo*, 148–50.
127. ACA, C, Reg. 472, 284r–v (1335) = *MV Docs.*, 314 (doc. no. 56).
128. ACA, C, Reg. 440, 202v (1330).
129. ACA, C, Reg. 359, 17v (1319).
130. ACA, C, Reg. 355, 79r (1316).
131. ACA, C, Reg. 359, 17v (1319).
132. ACA, C, Reg. 462, 135r–v (1333) = *MV Docs.*, 303 (doc. no. 43).
133. ACA, C, Reg. 462, 135r–v (1333).
134. See, for example, Otis, *Prostitution in Medieval Society*, 111–12; Peris, “La prostitución valenciana,” 180–83 and 197–99; Rossiaud, *Medieval Prostitution*, 160–66.
135. For a detailed study of such attempts to reform prostitutes in one Mediterranean city, see Rollo-Koster, “From Prostitutes to Brides of Christ,” 109–44.
136. ACA, C, Reg. 431, 204v–205r (1328) = *MV Docs.*, 269 (doc. no. 5).
137. Otis, *Prostitution in Medieval Society*, 68.
138. ACA, C, Processos en quart, 1302B (1304/05).
139. Prostitutes’ children were not subject to their mothers’ *infamia*, with the only exception being their disqualification from the priesthood. C. 4 q. 1 c. 1; C. 4 q. 2, 3 c. 3; D. 56 c. 4 and d.p.c. 13. This restriction was, however, applied to all illegitimate children and thus may have had little to do with the prostitutes’ profession per se.
140. Bernard of Parma, *Glossa ordinaria* to X 5.1.20, v. *concubinariorum*; and to X 2.1.14, v. *factum proponant*.
141. *CADC, Prag.* IX.3.2 (1330).
142. Johannes Teutonicus, *Glossa ordinaria* to D. 86 c. 7, v. *talibus* and to D. 86 c. 8 v. *meretricibus*.
143. ACA, C, Reg. 462, 143v (1333); ACA, C, Reg. 472, 284r–v (1335) = *MV Docs.*, 314 (doc. no. 56).

CHAPTER 4. GENDER AND VIOLENCE

1. Flocel Sabaté, “Femmes et violence dans la Catalogne du XIVe siècle,” *Annales du Midi* 106 (1994): 280–81.

2. Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford: Clarendon Press, 1996), 59–71; Bernard Capp, *When Gossips Meet: Women, Family, and Neighbourhood in Early Modern England* (Oxford: Oxford University Press, 2003), 188–224.

3. ACA, Procesos en quart, 1302B (1302).

4. Sabaté, “Femmes et violence,” 303–5.

5. A tendency that has been well documented for medieval England; see Sara M. Butler, *The Language of Abuse: Marital Violence in Later Medieval England* (Leiden: Brill, 2007), 33–53; Emma Hawkes, “The ‘Reasonable’ Laws of Domestic Violence in Late Medieval England,” in *Domestic Violence in Medieval Texts*, ed. Eve Salisbury, Georgiana Donavin, and Merrall Llewelyn Price (Gainesville: University Press of Florida, 2002), 57–70.

6. See, for example, Joanne Ferraro, “The Power to Decide: Battered Wives in Early Modern Venice,” *Renaissance Quarterly* 48 (1995): 498–504; Butler, *The Language of Abuse*, 81–86, 184–201.

7. Julie Hardwick, “Early Modern Perspectives on the Long History of Domestic Violence: The Case of Seventeenth-Century France,” *Journal of Modern History* 78 (2006): 4.

8. For a detailed analysis of the canonists’ writing on this topic, including the canons discussed in this paragraph, see James A. Brundage, “Domestic Violence in Classical Canon Law,” in *Violence in Medieval Society*, ed. Richard W. Kaeuper (Woodbridge: Boydell, 2000), 183–95.

9. C. 33 q.2 c.10.

10. Johannes Teutonicus, *Glossa ordinaria* to D. 25 d.p.c. 3, v. *servuum*.

11. Johannes Teutonicus, *Glossa ordinaria* to c.7 q.1 c.39, v. *iudicari*.

12. Nov. 117.14.3.

13. Cod. 5.17.8.

14. According to canonists from Gratian to Alexander III, marital affection was created by God, and spouses had a religious duty to maintain it. John T. Noonan, Jr., “Marital Affection in the Canonists,” *Studia Gratiana* 12 (1967): 479–509.

15. ACA, C, Reg. 437, 88v–89r (1330). A dowry of 150 sous would have been quite low for a marriage within the *cavaller* class (compare with the dowries noted in Chapter 2), but there is no notation in the document to explain this apparent discrepancy.

16. ACA, C, Reg. 358, 105r (1318).

17. “. . . Dei abiecto timore, conjugaleque vinculum violans et dirrumpens” ACA, C, Reg. 358, 105r (1318).

18. “. . . contra dei precepta veniendo et contra legem matrimonii” ACA, C, Reg. 437, 88v–89r (1330).

19. Divorce *a mense et thoro* could be secured on grounds of adultery, heresy or apostasy, and cruelty; see X 4.19.5 and 7.

20. Daniel Baraz, *Medieval Cruelty: Changing Perceptions, Late Antiquity to the Early Modern Period* (Ithaca, N.Y.: Cornell University Press, 2003), esp. 5–7; Butler, *The Language of Abuse*, 2–3; Barbara A. Hanawalt, “Violence in the Domestic Milieu of Late Medieval England,” in *Violence in Medieval Society*, ed. Richard W. Kaeuper (Woodbridge: Boydell, 2000), 199.

21. David Nirenberg, *Communities of Violence: Persecution of Minorities in the Middle Ages* (Princeton, N.J.: Princeton University Press, 1996); Mark D. Meyerson, Daniel Thiery, and Oren Falk, eds., *“A Great Effusion of Blood”? Interpreting Medieval Violence* (Toronto: University of Toronto Press, 2004), 4–11. See also Frances E. Dolan, who argues for early modern France that “in representations of domestic crime, the threat usually lies in the familiar rather than the strange, in the intimate rather than the invader” and that these representations manipulated and amplified preexisting anxieties about newly unstable hierarchies. Dolan, *Dangerous Familiars: Representations of Domestic Crime in England, 1500–1700* (Ithaca, N.Y.: Cornell University Press, 1996), 1–6, quote at 4.

22. The acceptable level of violence within medieval marriage was, however, lower than conventional wisdom has long suggested; for debunking of the popular notion about the supposed “rule of thumb” regarding spousal violence in the common law, see Henry Ansgar Kelly, “Rule of Thumb and the Folklaw of the Husband’s Stick,” *Journal of Legal Education* 44 (1994): 341–65.

23. ACA, C, Reg. 358, 105r (1318).

24. ACA, C, Reg. 359, 69v–70r (1319).

25. John T. Noonan, Jr., *Power to Dissolve: Lawyers and Marriages in the Courts of the Roman Curia* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1972), 27–30.

26. Cod. 2.20.7, 9.

27. X 4.1.29.

28. Hawkes, “The ‘Reasonable’ Laws of Domestic Violence,” 62–67. This continues to be a question in modern Anglo-American law and a persistent problem for feminist legal theorists. See Caroline Forell and Donna Matthews, *A Law of Her Own: The Reasonable Woman as a Measure of Man* (New York: New York University Press, 2001), esp. 3–19.

29. Butler, *The Language of Abuse*, 99–120; Hardwick, “Early Modern Perspectives on the Long History of Domestic Violence,” 11–12.

30. Sara Butler has argued that English church courts may have seen economic deprivation as a form of domestic violence; Butler, *The Language of Abuse*, 107–14.

31. ACA, C, Reg. 359, 69v–70r (1319).

32. ACA, C, Reg. 376, 37 r–v (1325).

33. ACA, C, Reg. 437, 88v–89r (1330).

34. ACA, C, Reg. 358, 105r (1318).

35. ACA, C, Reg. 433, 163v (1328).

36. Brundage, “Domestic Violence,” 192–93.

37. Julian Pitt-Rivers, “Honor and Social Status in Andalusia,” in Pitt-Rivers, *The Fate of Shechem, or the Politics of Sex: Essays in the Anthropology of the Mediterranean* (Cambridge:

Cambridge University Press, 1977), 23–28. Pitt-Rivers's essay deals with twentieth-century Andalusia, but other essays in the same volume suggest a vision of honor culture that extends throughout the Mediterranean and centuries or even millennia into the past that has been called into question by more recent anthropological work.

38. ACA, C, Reg. 358, 105r (1318).

39. ACA, C, Reg. 437, 88v–89r (1330).

40. For the *segurament*'s possible origin with the Peace and Truce movements, see Remedios Ferrero Micó, “‘Pau e treua’ en Valencia,” in *Estudios dedicados a Juan Peset Aleixandre*, vol. 2 (Valencia: University of Valencia, 1982), 1–15; for spread and diversification of use, see Esther Cohen, “Violence-Control in Late Medieval France: The Social Transformation of the Asseurement,” *Tijdschrift voor Rechtsgeschiedenis/Legal History Review* 51 (1983): 111–22. Cohen also notes (112) that one northern French legal gloss asserts that these *asseurements* were “selonc droit de la Digeste” but does not note the particular provision of Roman law that was supposedly the ultimate origin of these orders.

41. “. . . no batre sa muller ab tal duresa que pogués ociurela o deixarla alisiada per tota sa vida.” Sabaté, “Femmes et violence,” 306–7.

42. Sabaté, “Femmes et violence,” 307–8.

43. For the Roman *ius occidendi*, see Antti Arjava, *Women and Law in Late Antiquity* (Oxford: Clarendon Press, 1996), 194–95; and Judith Evans Grubbs, *Law and Family in Late Antiquity: The Emperor Constantine's Marriage Legislation* (Oxford: Clarendon, 1995), 214–21. Visigothic laws on the same subject can be found at *Leg. Vis.* 3.4.4 and 9–11, and 3.6.2.

44. *Leg. Vis.* 3.4.4. A procedural note also helps to establish the seriousness of this crime under Visigothic law: slaves who could provide evidence of an adulterous liaison might be tortured to testify, and a master could not free a slave to prevent him or her from being compelled to testify (*Leg. Vis.* 3.4.10–11), suggesting that the Visigoths were almost as harsh in investigating charges of adultery as they were in punishing them.

45. Arjava, *Women and Law in Late Antiquity*, 195.

46. David Viera, “Francesc Eiximenis y el homicidio de la mujer adultera,” *Estudios Franciscanos* 79 (1978): 4–7.

47. Viera, “Francesc Eiximenis y el homicidio,” 7–10; the passage in Eiximenis is based on Matt. 26:52. One should note that Eiximenis's reasoning demonstrates a primary concern for the immortal soul of the violent husband, rather than for the welfare of the woman victim.

48. “Car ell no és senyor de la justícia, ans és ministre e servidor e execudor d'aquella.” Eiximenis, chap. 50.

49. “Deman-te de qual auctoritat has dada la major pena al peccat no major que tot altre, con digua la ley divinal e natural que segons la colpa sia la pena? E tu has dada a.questa fembra aytan gran pena con si fos heretga or hagués Déu públicament reneguat.” Eiximenis, chap. 51. For early modern England, Frances Dolan has noted that the murderous husband was rhetorically converted into a caricature of cruelty, which enabled officials to reject murder without undercutting the patriarchal values that lay behind uxoricide; Dolan, *Dangerous Familiars*, 91–121.

50. Sabaté, “Femmes et violence,” 305–6. Likewise, in England, uxoricide cases, unlike other murders, engender defenses of “hot blood” as a justification for murder; Butler, *The Language of Abuse*, 209–24.

51. ACA, C, Processos en foli 126/19 (1378).

52. ACA, C, Reg. 376, 23v (1325).

53. ACA, C, Reg. 376, 23v (1325).

54. ACA, C, Processos en foli 3/2 (1296).

55. ACA, C, Reg. 476, 262r–v (1328).

56. ACA, C, Reg. 482, 24r–v (1330).

57. ACA, C, Reg. 392, 166v–167r (1326).

58. ACA, C, Reg. 484, 77v–78r (1332).

59. ACA, C, Reg. 484, 78r (1332).

60. Viera, “Francesc Eiximenis y el homicidio,” 4–7.

61. ACA, C, Processos en foli 3/2 (1296).

62. Ricardo Córdoba de la Llave, *El instinto diabólico: agresiones sexuales en la Castilla medieval* (Córdoba: Universidad de Córdoba, 1994), 15–17.

63. James A. Brundage, “Rape and Seduction in Medieval Canon Law,” in *Sexual Practices and the Medieval Church*, ed. Vern L. Bullough and James Brundage (Buffalo: Prometheus Books, 1982), 147–48.

64. Iñaki Bazán Díaz, “El Estupro: sexualidad delictiva en la Baja Edad Media y primera Edad Moderna,” *Mélanges de la Casa de Velázquez*, n.s. 33 (2003): 13–46. Scholars studying rape in medieval culture in general have noted the conflation of rape with seduction and the way that literary conventions leak into rape records to render rape romantic or even burlesque. See Kathryn Gravdal, *Ravishing Maidens: Writing Rape in Medieval French Literature and Law* (Philadelphia: University of Pennsylvania Press, 1991), 72–103; Rebecca Winer, “Defining Rape in Medieval Perpignan: Women Plaintiffs Before the Law,” *Viator* 31 (2000): 174–75. Either of these two, it should be noted, might play into contemporary gender assumptions about female sexuality.

65. For a detailed treatment of the Roman law of marriage, focusing especially on the classical period, see Susan Treggiari, *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian* (Oxford: Clarendon Press, 1991), esp. 138–59. In general, the Roman law of the classical period required the prospective bride’s consent to both engagement and marriage, but it was the consent of her parents that was paramount (Dig. 23.1.11, 23.2.2). Furthermore, Roman law assumed a young woman’s consent in the absence of any overt objection and restricted a young woman’s right to dissent from parental choice to cases where the person her parents had chosen for her was manifestly unsuitable (Dig. 23.1.12). In general, we might summarize the legal assumptions behind Roman law by the time of Justinian as having moved toward a recognition of women’s legal agency but in a very limited fashion: she had the capacity to accept or reject the choice of marriage partner her parents offered her, but she was not expected to do anything but consent, except in the most extreme circumstances.

66. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University

of Chicago Press, 1987), 47–48, 107. For original citations, see Dig. 48.6.3.4, 47.9.3.5, and 47.10.9.4 for law of the classical period; *Cod. Theod.* 9.24.1.2–3 and *Cod.* 9.13.1 for the law of the later empire.

67. *FVVI.IX.3.*

68. *CADC, Prag.* V.1.1 (1269).

69. *C. Tort.* VI.2.7.

70. *ACA, C, Reg.* 379, 109v–110r (1325).

71. *ADG, Lletres, U4,* 156v–157r (1331).

72. *ACA, C, Reg.* 379, 109v–110r (1325).

73. *ADG, Lletres, U4,* 156v–157r (1331).

74. For more on marriage doctrine in the early Christian Church, see Philip Lyndon Reynolds, *Marriage in the Western Church: The Christianization of Marriage During the Patristic and Early Medieval Periods* (Leiden: Brill, 1994), esp. 227–58.

75. *C.27 q.2 d.p.c.2.*

76. *C.31 q.2 d.p.c.4.* See also John T. Noonan, “Power to Choose,” *Viator* 4 (1973): 419–34.

77. Young couples had for centuries used fictive abduction as a mechanism to pit their own will against that of their parents; see, for example, Suzanne Fonay Wemple, *Women in Frankish Society: Marriage and the Cloister, 500–900* (Philadelphia: University of Pennsylvania Press, 1981), 33–37. For a discussion of ritual abduction in high medieval Castile, with special reference to the idea that the process may have involved the complicity of the parents, see Heath Dillard, *Daughters of the Reconquest* (Cambridge: Cambridge University Press, 1984), 137–46.

78. *CADC, Const.* V.1.2 (1219). The same punishment applied to women who married against their parents’ wishes without fleeing. The important factor here seems to be not the flight but the defiance of parental authority.

79. *CADC, Prag.* IX.3.1 (1244).

80. Brundage, “Rape and Seduction,” 141–43.

81. *C.27 q.2 d.p.c. 47, d.a.c. 49, d.p.c. 49; C. 36 q.1 d.p.c. 2.*

82. For an exhaustive discussion of rape in the Visigothic law, see Victoria Rodríguez Ortiz, *Historia de la violación: su regulación jurídica hasta fines de la Edad Media* (Madrid: Comunidad de Madrid, 1997), 167–233.

83. *Leg. Vis.* 3.1.1. The provision that explicitly gives primary standing in cases of *raptus* to a victim’s parents, rather than to the victim herself, appears only in the later redaction of the *Liber* under Ervig, rather than the earlier redaction of Reccesvind.

84. *Leg. Vis.* 3.4.14.

85. *C. 27 q. 2 c. 48* and *C. 36 q. 1 c. 1.*

86. Brundage, “Rape and Marriage in the Medieval Canon Law,” *Revue de droit canonique* 28 (1978): 67–70; for references to specific works in post-Gratian canon law, see Brundage, *Law, Sex, and Christian Society*, esp. 311–13, 396–98, 469–72.

87. *C. 36 q. 1 d.p.c. 2 § 5* and *C. 27 q. 2 d.p.c. 47.*

88. *C. 36 q. 1 d.p.c. 3.* See also Brundage, “Rape and Marriage,” 64–66. Kathryn

Gravdal has noted an opposite tendency in the medieval literary discourse of rape, a tendency to move away from the suffering of the female victim and more toward rape as being about relationships between men. For this shift to take place, the violence of the act and even the woman herself necessarily fade into the background; her body becomes a stage upon which the male chivalric drama is played out. Gravdal, “Chrétien de Troyes, Gratian, and the Medieval Romance of Sexual Violence,” *Signs* 17 (1992): 558–85. In my opinion, however, Gravdal overstates the correspondence between this literary trope and the law of the time when she refers to medieval women as “the legal chattel of men” (583), thus reading the same effacement of the raped woman in law as she does in literature. I believe the evidence presented in this chapter shows otherwise.

89. Brundage, “Rape and Marriage,” 67–70.

90. ACA, C, Reg. 369, 113r (1321).

91. ACA, C, Reg. 430, 10r–v (1328). The courts would likely have considered the fact that the crime took place after nightfall as an aggravating circumstance; breaking and entering or armed assault (as in the following cases) could also significantly increase a perpetrator’s sentence.

92. ACA, C, Reg. 367, 51r–v (1322). Renato Barahona has argued for the essential similarity of tricking a woman out of her home and abduction because the goal was the same: to use dishonest means to get a woman in a physical position where she would be vulnerable to rape. Barahona, *Sex Crimes, Honour, and the Law in Early Modern Spain: Vizcaya, 1528–1735* (Toronto: University of Toronto Press, 2003), 76.

93. ACA, C, Reg. 371, 87r (1322).

94. ACA, C, Reg. 474, 195v (1328).

95. ACA, C, Reg. 380, 32r (1327).

96. ACA, C, Reg. 360, 55r–v (1319).

97. ACA, C, Reg. 358, 176v (1318).

98. ACA, C, Reg. 360, 41r (1319).

99. Flocel Sabaté has noted that about half of rape accusations in fourteenth-century Catalonia were for attempted rapes; Sabaté, “Femmes et violence,” 296–97. Of the four cases in this study in which the victim is reported to be either married or widowed, only one (ACA, C, Reg. 474, 195v [1328]) describes a fully consummated rape; the rest are attempted rapes. Compare this 75 percent figure to the cases of rape-related documents involving unmarried women, where only 10 percent (2 of 20) represent cases where the rape was attempted rather than accomplished.

100. Along these same lines, Garthine Walker has noted that rape narratives in early modern England might refer to sexual contact metaphorically—especially common was the locked household door, an eroticization of male intrusion on female space. Walker, “Reading Rape and Sexual Violence in Early Modern England,” *Gender and History* 10 (1988): 12–15.

101. ACA, C, Reg. 358, 176v (1318).

102. ACA, C, Reg. 360, 55r–v (1319).

103. ACA, C, Reg. 474, 195v (1328).

104. Rufinus, *Summa* to C. 22 q. 5 c. 1.
105. “Sert yo’t ouciure si dius a ton pare”; “Pes cap de deu si’n parlazez vous a naure ab la exada.” ACA, C, Processos en quart 321/1333C, 5r, 7r (1327–1333). According to Ricardo Córdoba de la Llave, it was not uncommon for after-the-fact force to appear in the records as instrumental; see Córdoba de la Llave, *El instinto diabólico*, 61–62.
106. Walker, “Reading Rape and Sexual Violence,” 5–6.
107. Dillard, *Daughters of the Reconquest*, 183.
108. Rufinus, *Summa* to C. 34 q. 1, 2 c. 3, v. *Legat libros*.
109. See, for example, C. *Tört.* IX.2.1, regarding virgins, and C. *Tört.* IX.2.2, regarding married women: both laws specify punishment for rape of a woman “if she raises a cry.” In the case of virgins, however, the hue and cry might be raised by her friends, rather than by the woman herself. If a victim failed to protest audibly, then silence was taken as consent—see Tancredus, *Apparatus* to 3 comp. 5.2 5, to v. *Non prebere* (unpublished MS, cited in Brundage, “Rape and Marriage,” 69 n. 3). For an analysis of visual representations of female resistance, see Diane Wolfthal, “‘A Hue and a Cry’: Medieval Rape Imagery and Its Transformation,” *Art Bulletin* 75 (1993): 39–64, esp. 43–44.
110. ACA, C, Processos en quart 321/1333C, 4v (1327–1333).
111. Walker, “Reading Rape and Sexual Violence,” 8–11.
112. Rodríguez Ortiz, *Historia de la violación*, 377–80.
113. ACA, C, Reg. 478, 285r–v (1329).
114. Nancy Virtue, “Another Look at Medieval Rape Legislation,” *Mediaevalia* 22 (1998): 79–94.
115. Wolfthal, “‘A Hue and a Cry,’” 51–57.
116. Isabel Pérez Molina, “Les dones en el dret clàssic català: un discurs sexual,” *Duoda* 2 (1991): 53.
117. Leah Lydia Otis, *Prostitution in Medieval Society: The History of an Urban Institution in Languedoc* (Chicago: University of Chicago Press, 1985), 64–68.
118. Córdoba de la Llave, *El instinto diabólico*, 25–26.
119. Sabaté, “Femmes et violence,” 295.
120. C. *Tört.* IX.2.3.
121. ACA, C, Reg. 357, 105v–106r (1318); ACA, C, Reg. 369, 113r (1321); ACA, C, Reg. 371, 87r (1322); ACA, C, Reg. 380, 32r (1327); ACA, C, Reg. 380, 39v–40r (1327); ACA, C, Reg. 430, 88r (1329); ACA, C, Reg. 436, 109r (1329); ACA, C, Reg. 478, 285r–v (1329); ACA, C, Reg. 479, 145v–146r (1329); ACA, C, Reg. 484, 72r–v (1331); ACA, C, Processos en quart 321/1333C (1327–1333); AHCM, Manuals del veguer 8, 41v (1313); AHCT, llibres del batlle 3–I, 127v–128r (1326).
122. Pedro López Elum and Mateu Rodrigo Lizondo, “La mujer en el código de Jaime I de los *Furs de Valencia*,” in *Las mujeres medievales y su ámbito jurídico: actas de las II Jornadas de investigación interdisciplinaria* (Madrid: Universidad Autónoma de Madrid, 1983), 131.
123. Courts might call in lay “experts” to conduct a physical examination in other types of cases as well; see, for example, Jacqueline Murray, “On the Origins and Role of

‘Wise Women’ in Causes for Annulment on the Grounds of Male Impotence,” *Journal of Medieval History* 16 (1990): 235–49; see also Montserrat Cabré Pairet, “Formes de cultura femenina a la Catalunya medieval,” in *Més enllà del silenci: les dones a la història de Catalunya*, ed. Mary Nash (Barcelona: Generalitat de Catalunya, 1988), 31–39.

124. ACA, C, Processos en quart 321/1333C, 2r–3v (1327–1333).

125. Córdoba de la Llave, *El instinto diabólico*, 27–29.

126. ACA, C, Reg. 355, 84r (1315/16).

127. Barbara Hanawalt, *The Ties That Bind: Peasant Families in Medieval England* (Oxford: Oxford University Press, 1986), 167–68.

128. ACA, C, Processos en quart 321/1333C (1327–1333); ACA, C, Reg. 352, 65v–66r (1314/15); ACA, C, Reg. 355, 84r (1315/16); ACA, C, Reg. 367, 51r–v (1322); ACA, C, Reg. 371, 87r (1322); ACA, C, Reg. 373, 33r (1325); ACA, C, Reg. 533, 177v (1332) = *MV Docs.*, 298–99 (doc. no. 38); ACA, C, Reg. 438, 126r (1330) and ACA, C, Reg. 482, 58r–v (1330) (the final two of these cover the same case).

129. ACA, C, Reg. 373, 33r (1325).

130. ACA, C, Reg. 533, 177v (1332) = *MV Docs.*, 298–99 (doc. no. 38).

131. ACA, C, Reg. 438, 126r (1330).

132. Sabaté, “Femmes et violence,” 295.

133. See, for example, ACA, C, Reg. 438, 126r (1330); ACA, C, Reg. 371, 87r (1322); ACA, C, Reg. 533, 177v (1332) = *MV Docs.*, 298–99 (doc. no. 38).

134. Guido Ruggiero, *The Boundaries of Eros: Sex Crime and Sexuality in Renaissance Venice* (Oxford: Oxford University Press, 1985), 102. Note that Ruggiero speculates that the use of *puella* to describe slightly older girls is attributable to an upward trend in the age of menarche, rather than a desire for prosecutorial impact, as I argue here.

135. ACA, C, Processos en quart 321/1333C, 4v–5r and 7r–v (1327–1333). For a full discussion of this case and its implications for the legal agency of young girls, see Marie A. Kelleher, “Law and the Maiden: *Inquisitio*, *Fama*, and the Testimony of Children in Medieval Catalonia,” *Viator* 37 (2006): 351–67.

136. ACA, C, Reg. 371, 87r (1322).

137. ACA, C, Reg. 358, 176v (1318); ACA, C, Reg. 533, 177v (1332) = *MV Docs.*, 298–99 (doc. no. 38).

138. ACA, C, Reg. 380, 32r (1327).

139. ACA, C, Reg. 436, 109r (1329).

140. ACA, C, Reg. 436, 49r (1329).

141. Córdoba de la Llave, *El instinto diabólico*, 43–44.

142. Juliette M. Turlan, “Instigante diabolico,” in *Mélanges offerts à Jean Dauvillier* (Toulouse: Centre d’histoire juridique méridionale, Université des sciences sociales de Toulouse, 1979), 806–7.

143. Ruggiero, *Boundaries of Eros*, 90–92.

144. ACA, C, Reg. 355, 84r (1315/16); ACA, C, Reg. 367, 51r–v (1322); ACA, C, Reg. 369, 113r (1321); ACA, C, Reg. 436, 109r (1329).

145. ACA, C, Reg. 360, 55r–v (1319). Not only were virgins overwhelmingly represented

among the victims in this subset of cases, but four of five documents requesting exemplary justice were in response to attacks carried out by more than one person.

146. For factors that could affect a woman's value on the marriage "market," see David Herlihy, *Medieval Households* (Cambridge, Mass.: Harvard University Press, 1985), 101–2.

147. Sabaté, "Femmes et violence," 295. The author also notes that the courts did not count as rape those sexual assaults in which the girl's virginity was not lost in the act. One might further speculate that a perhaps even higher percentage of the rape cases settled out of court concluded with a marriage between the two parties, in order to salvage the honor of both the woman and her family and to help the assailant avoid prosecution.

148. C. 36 q. 2 c. 1, 4.

149. C. 36 q. 2 d.p.c. 6, c. 9, 10, d.p.c. 11. James Brundage has argued that this law not only opened up a loophole for rapists who were able subsequently to persuade their victims to marry them but also may have given the women involved more freedom in choosing their marriage partners. See Brundage, "Rape and Marriage," 74–75, and above, Chapter 3.

150. C. Tort. IX.2.1.

151. López Elum and Rodrigo Lizondo, "La mujer en el código de Jaime I," 131.

152. ACA, C, Reg. 357, 105v–106r (1318).

153. ACA, C, Reg. 484, 72r–v (1331).

154. C. Tort. IX.2.1.

155. ACA, C, Reg. 429, 283r–v (1328).

156. C. Tort. IX.2.1.

157. ACA, C, Reg. 478, 285r–v (1329).

158. ACA, C, Reg. 367, 51r–v (1322).

159. *Leg. Vis.* 3.4.1.

160. Sabaté, "Femmes et violence," 294.

161. C. Tort. IX.2.2.

162. A position grounded in Cod. 9.13.1; see Brundage, "Rape and Marriage," 66.

163. Sabaté, "Femmes et violence," 296.

164. Ruggiero, *Boundaries of Eros*, 90–99.

165. ACA, C, Reg. 360, 41r (1319). Note that in this case, it was not the rape itself that was being compensated but the violent beatings that accompanied and followed the attempt.

CONCLUSIONS

1. Joan Kelly [Gadol], "Did Women Have a Renaissance?" in *Becoming Visible: Women in European History*, ed. Renate Bridenthal and Claudia Koonz (Boston: Houghton-Mifflin, 1977), 137–64. Judith Bennett has provided a wry (though not unsympathetic) characterization of a certain pattern that developed among medieval women's historians in the three decades after Kelly's essay; see Bennett, *History Matters: Patriarchy and the Challenge of Feminism* (Philadelphia: University of Pennsylvania Press, 2006), 141.

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